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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 77, No. 28

Friday, February 10, 2012

Administrative Conference of the United States
NOTICES
Meetings:
Committee on Adjudication, 7115

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Food Safety and Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7115–7116
Competition under the America COMPETES Reauthorization Act of 2011, 7116–7121

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Contract Pilot and Aircraft Acceptance, 7121–7122
Authorization of Importation of Pomegranate from India into the Continental U.S., 7122–7123
Environmental Assessments; Availability, etc.:
ArborGen, LLC; Controlled Release of a Genetically Engineered Eucalyptus Hybrid, 7123–7124
Meetings:
Information Sharing with Agency Stakeholders, 7124

Architectural and Transportation Barriers Compliance Board

NOTICES
Meetings, 7126

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 7164–7165

Coast Guard
RULES
Drawbridge Operations:
Merrimack River, Amesbury, MA, 6963
Oakland Inner Harbor, Oakland, CA, 6962–6963
Special Local Regulations, Safety and Security Zones:
Recurring Events in Captain of the Port Long Island Sound Zone, 6954–6962
PROPOSED RULES
Safety Zones:
America's Cup World Series, East Passage, Narragansett Bay, RI, 7025–7028
NOTICES
National Boating Safety Advisory Council; Vacancies, 7170–7171

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7126–7127

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions, 7137
Procurement List; Proposed Additions, 7137–7138

Commodity Credit Corporation
RULES
Farm and Ranch Lands Protection Program, 6941–6945

Commodity Futures Trading Commission
NOTICES
FY 2011 Service Contract Inventory; Availability, 7138

Comptroller of the Currency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7238–7239

Consumer Product Safety Commission
PROPOSED RULES
Safety Standard for Infant Swings, 7011–7025
NOTICES
Meetings; Sunshine Act, 7138

Defense Department
NOTICES
Meetings:
Defense Advisory Committee on Women in the Services, 7138–7139

Defense Nuclear Facilities Safety Board
NOTICES
FY 2010 Service Contract Inventory Analysis/FY 2011 Service Contract Inventory; Availability, 7139

Drug Enforcement Administration
NOTICES
Decisions and Orders:
Scott W. Houghton, M.D., 7182–7183

Economic Development Administration
NOTICES
Petitions for Determination of Eligibility to Apply for Trade Adjustment Assistance, 7127

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program:
Energy Conservation Standards for Distribution Transformers, 7282–7381
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7139–7140

Environmental Protection Agency
RULES
Approvals and Promulgations of Air Quality Implementation Plans:
Maryland; Preconstruction Permitting Requirements for Electric Generating Stations in Maryland, 6963–6970
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7143–7147
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
State Program Adequacy Determination; Municipal Solid Waste Landfills, etc., 7147–7148
Approval of Clean Air Act Outer Continental Shelf Permits:
Shell Gulf of Mexico, Inc., and Shell Offshore, Inc. for the Discoverer Drillship, 7148–7149
Environmental Impact Statements; Availability, etc.:
Weekly Receipt, 7149
Workshops:
Integrated Science Assessment for Oxides of Nitrogen, 7149–7151

Export-Import Bank
NOTICES
Privacy Act; Systems of Records, 7151–7152

Federal Aviation Administration
RULES
Special Conditions:
Learjet Inc., Learjet Model LJ–200–1A10; Interaction of Systems and Structures, 6945–6949
PROPOSED RULES
Airworthiness Directives:
Airbus Airplanes, 7007–7010
Eurocopter Deutschland GMBH Helicopters, 7005–7007
Clarification of Policy Regarding Approved Training Programs; Correction, 7010–7011
NOTICES
Release of Aeronautical Property:
New Castle Airport (ILG), New Castle, DE, 7231–7232

Federal Communications Commission
NOTICES
Mobility Fund Phase I Auction:
Competitive Bidding Procedures for Auction 901 and Certain Program Requirements, 7152–7162

Federal Contract Compliance Programs Office
PROPOSED RULES
Affirmative Action and Nondiscrimination Obligations:
Contractors and Subcontractors Regarding Individuals with Disabilities, 7108–7109

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 7162

Federal Emergency Management Agency
RULES
Final Flood Elevation Determinations, 6976–6985
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Fire Incident Reporting System, 7171–7172

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 7140–7142
Environmental Assessments; Availability, etc.:
Jersey Central Power and Light Co., PSEG Fossil, LLC, 7142
Preliminary Permit Applications:
Grand Coulee Project Hydroelectric Authority, 7143
Green Wave Mendocino Wave Park, 7143

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 7162

Federal Motor Carrier Safety Administration
NOTICES
Qualification of Drivers; Exemption Applications; Diabetes Mellitus, 7232–7233
Qualification of Drivers; Exemption Applications; Vision, 7233–7236

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Prohibition on Funding of Unlawful Internet Gambling, 7162–7163
Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities, 7163–7164

Fish and Wildlife Service
NOTICES
Comprehensive Conservation Plan and Environmental Impact Statement:
Sequoyah National Wildlife Refuge, Sequoyah, Muskogee, and Haskell Counties, OK, 7172–7174
Draft Phase I Early Restoration Plan and Environmental Assessment:
Deepwater Horizon Oil Spill; Correction, 7174–7175
Endangered and Threatened Species Permit Applications, 7175–7176
Environmental Assessments; Availability:
Great Bay National Wildlife Refuge, Rockingham County, NH, 7176–7178

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Medical Device Recall Authority, 7165–7166
Draft Guidance for Industry; Availability:
Safety Data Collection Needed in Late Stage Premarket and Postapproval Clinical Investigations, 7166–7167

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission Committee on General Principles, 7125–7126

General Services Administration
RULES
Acquisition Regulations:
Reinstatement of Coverage Pertaining to Final Payment under Construction and Building Service Contracts, 6985–6988

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

See Substance Abuse and Mental Health Services Administration
RULES
Establishment of User Fees for Filovirus Testing of Nonhuman Primate Liver Samples, 6971–6976
PROPOSED RULES
Establishment of User Fees for Filovirus Testing of Nonhuman Primate Liver Samples, 7109–7114
NOTICES
Meetings:
National Biodefense Science Board, 7164

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Federal Property Suitable as Facilities to Assist the Homeless, 7246–7279
Funding Awards:
Continuum of Care Program for Fiscal Year 2010, 7384–7487

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7239–7242

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Low Enriched Uranium from France, 7128–7129
Countervailing Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Certain Pasta from Italy, 7129–7131
Meetings:
Environmental Technologies Trade Advisory Committee; Addendum, 7131–7132
Request for Applicants:
United States–India CEO Forum, 7132–7133
Requests for Nominations:
Advisory Committee on Supply Chain Competitiveness, 7133

International Trade Commission
NOTICES
Meetings; Sunshine Act, 7182

Justice Department
See Drug Enforcement Administration
NOTICES
Lodging of Consent Decrees under the Clean Water Act, 7182

Labor Department
See Federal Contract Compliance Programs Office

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Incorporation of Greater Sage-grouse Conservation Measures into Land Management Plans; Correction, 7178–7179
Land Exchange Between BLM and Agua Caliente Band of Cahuilla Indians, Riverside County, CA, 7179–7180
Filing of Plats of Survey:
California, 7180
Intent to Collect Fees on Public Lands:
Mesa County, CO, 7180

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
RULES
Tracking and Data Relay Satellite System Rates for Non-U.S. Government Customers, 6949–6954
NOTICES
FY 2011 Service Contract Inventory; Availability, 7183–7184

National Archives and Records Administration
NOTICES
FY 2011 Service Contract Inventory, Availability, 7184

National Institutes of Health
NOTICES
Meetings:
National Institute of Diabetes and Digestive and Kidney Diseases, 7167
Requests for Information:
Global Rare Diseases Patient Registry and Data Repository, 7167–7169

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Reef Fish Fishery of the Gulf of Mexico; Amendment 32, 6988–7000
Fisheries of the Northeastern United States:
Northeast Multispecies Fishery; Gulf of Maine Winter Flounder Catch Limit Revisions, 7000–7004
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Annual Economic Survey of Federal Gulf and South Atlantic Shrimp Permit Holders, 7134
Endangered and Threatened Species:
Recovery Plans, 7134–7135
Meetings:
Caribbean Fishery Management Council, 7136–7137
Gulf of Mexico Fishery Management Council, 7135–7136
Pacific Fishery Management Council, 7135–7136

National Park Service
NOTICES
Meetings:
Native American Graves Protection and Repatriation Review Committee, 7180–7181

Nuclear Regulatory Commission
NOTICES
Exemptions:
Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Operations, Inc., 7184–7211
Materials License Amendments:
Pacific Gas and Electric Co., Diablo Canyon Independent Spent Fuel Storage Installation, 7211–7213

Patent and Trademark Office
PROPOSED RULES
Changes to Implement Derivation Proceedings, 7028–7041
Changes to Implement Inter Partes Review Proceedings, 7041–7060
Changes to Implement Post-Grant Review Proceedings, 7060–7080
Changes to Implement Transitional Program for Covered Business Method Patents, 7080–7095
Transitional Program for Covered Business Method Patents: Definition of Technological Invention, 7095–7108

Postal Regulatory Commission
NOTICES
Post Office Closings, 7213–7214

Postal Service
NOTICES
Environmental Assessments; Availability, etc.:
Mail Processing Network Rationalization Initiative, 7214

Securities and Exchange Commission
NOTICES
Self–Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 7216–7218
BATS Y-Exchange, Inc., 7215–7216
EDGA Exchange, Inc., 7225–7227
Financial Industry Regulatory Authority, Inc., 7218–7219
NYSE Arca, Inc., 7219–7225

Small Business Administration
RULES
Small Business Size Standards:
Professional, Technical, and Scientific Services, 7490–7515
NOTICES
Disaster Declarations:
Alabama, 7227–7228
Alaska, 7228
Nevada, 7228
Texas; Amendment 7, 7228–7229
Utah, 7229
Virginia; Amendment 3, 7229

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition Determinations:
Nomads and Networks – The Ancient Art and Culture of Kazakhstan, 7229–7230

Substance Abuse and Mental Health Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7169–7170

Surface Transportation Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7236–7237
Railroad Cost Recovery Procedures – Productivity Adjustments, 7237–7238

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Surface Transportation Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7230–7231

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 7238
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Prohibition on Funding of Unlawful Internet Gambling, 7162–7163

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Agreement to Train on Job Disabled Veterans, 7242
Contract for Training and Employment, 7242–7243
Operation Enduring Freedom/Operation Iraqi Freedom Veterans Health Needs Assessment, 7243
Supplier Perception Survey, 7244
Survey of Post-Deployment Adjustment among OEF and OIF Veterans, 7243–7244
Meetings:
Advisory Committee on Women Veterans, 7244

Separate Parts In This Issue

Part II
Housing and Urban Development Department, 7246–7279

Part III
Energy Department, 7282–7381

Part IV
Housing and Urban Development Department, 7384–7487

Part V
Small Business Administration, 7490–7515

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
1491 6941

10 CFR
Proposed Rules:
431 7282

13 CFR
121 7490

14 CFR
25 6945
1215 6949
Proposed Rules:
39 (2 documents) 7005, 7007
135 7010

16 CFR
Proposed Rules:
1223 7011

33 CFR
100 6954
117 (2 documents) 6962, 6963
165 6954
Proposed Rules:
165 7025

37 CFR
Proposed Rules:
42 (5 documents) ...7028, 7040, 7060, 7080, 7094

40 CFR
52 6963

41 CFR
Proposed Rules:
60-741 7108

42 CFR
71 6971
Proposed Rules:
71 7108

44 CFR
67 (2 documents) 6976, 6980

48 CFR
532 6985
552 6985

50 CFR
622 6988
648 7000

Rules and Regulations

Federal Register
Vol. 77, No. 28
Friday, February 10, 2012

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.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1491

[Docket No. NRCS–2009–0004]

RIN 0578–AA46

Farm and Ranch Lands Protection Program

AGENCY: Commodity Credit Corporation, Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Final rule amendment; response to comments.

SUMMARY: The Natural Resources Conservation Service (NRCS) published in the **Federal Register** a final rule for the Farm and Ranch Lands Protection Program (FRPP) on January 24, 2011, to address comments received on the interim rule and to publish changes to the entity certification requirements. At that time, NRCS provided an opportunity for the public to submit comments for 30 days on the certification requirements only. This rulemaking action is necessary to address those comments received on the entity certification requirements.

DATES: *Effective date:* This amendment is effective February 10, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Parkin, Team Leader, Easement Programs, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Ave. SW., Room 6807 South Building, Washington, DC 20250; Telephone: (202) 720–1864; Fax: (202) 720–9689; *Email: steve.parkin@wdc.usda.gov.*

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SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866, the Office of Management and Budget (OMB) has determined that this final rule amendment is not significant and will not be reviewed by OMB. The FRPP final rule published on January 24, 2011, is a significant regulatory action, and NRCS conducted an economic analysis of the potential impacts associated with this program. NRCS reviewed the economic analysis prepared for the final rule and determined that the provisions of this amendment do not alter the assessment and the findings that were originally prepared. A copy of the economic analysis is available on the NRCS Web site at: *http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/farmbill/analysis.*

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule amendment because NRCS is not required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

An environmental assessment (EA) was prepared in association with the FRPP interim and final rule. The provisions of this amendment do not alter the assessment and the findings that were originally prepared. The analysis determined that there would not be a significant impact to the human environment and as a result, an Environmental Impact Statement was not required to be prepared (40 CFR 1508.13). A copy of the EA and Finding of No Significant Impact may be obtained from the NRCS Web site at: *http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/farmbill/analysis.*

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that the final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The provisions of this amendment to the final rule do not alter the assessment and the findings that were originally prepared. A copy of the analysis may be obtained from the NRCS Web site at: *http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/farmbill/analysis.*

Paperwork Reduction Act

Section 2904 of the Food, Conservation, and Energy Act of 2008 (2008 Act) requires that implementation of programs authorized under Title II of the Act be made without regard to the Paperwork Reduction Act of 1995 (Title 44 U.S.C. 3501 *et seq.*). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this final rule amendment.

Executive Order 13132

Executive Order 13132 requires agencies to conform to principles of Federalism in the development of its policies and regulations. NRCS has determined that this final rule amendment conforms with the Federalism principles set forth in the Executive Order; would not have impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore, NRCS concludes that this final rule amendment does not have Federalism implementations.

Executive Order 13175

This final rule amendment has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. NRCS has assessed the impact of this final rule amendment on Indian Tribal Governments and concluded it will not negatively affect Indian Tribal Governments or their communities. This final rule amendment does not have a substantial direct effect on Tribes, as these regulatory provisions do not impose unreimbursed compliance costs nor preempts Tribal law.

Unfunded Mandates Reform Act of 1995

This action does not compel the expenditure of $100 million or more in any one year (adjusted for inflation) by any State, local, or Tribal Governments, or anyone in the private sector.

Therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Title III, section 304, requires that for each proposed major regulation with a primary purpose to regulate issues of human health, human safety, or the environment, USDA is to publish an analysis of the risks addressed by the regulation and the costs and benefits of the regulation. This final rule is not a proposed major regulation, and therefore, a risk analysis was not conducted.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This final rule amendment is neither major nor significant, and therefore, it is not subject to the SBREFA 60-day requirement. Accordingly, this final rule amendment is effective upon publication in the **Federal Register**.

Background

NRCS published in the **Federal Register** on January 16, 2009, an interim rule with request for comment amending the program regulations for FRPP. The interim rule implemented changes to FRPP made by the 2008 Act and made administrative improvements to the program. NRCS published a correction to the interim rule on July 2, 2009, to clarify that the contingent right of enforcement is a condition placed upon the award of financial assistance and, therefore, does not constitute a realty acquisition. That action also reopened the public comment period for the interim rule.

The FRPP final rule was issued on January 24, 2011, to address comments received on the interim rule and to publish changes to the entity certification requirements. At that time, NRCS provided the public an additional 30 days to comment only on the changes made by the final rule to the entity certification requirements. This rulemaking action is necessary to address comments received on the entity certification requirements during that public comment period.

Responses to Comments and Amendment to Final Rule

NRCS received 27 comments from 7 commenters on FRPP entity certification requirements as set forth in the January 24, 2011, final rule. The commenters addressed both procedural and substantive topics associated with FRPP entity certification. This section of the preamble addresses these comments and NRCS responses. Comments that NRCS received on other topics were not considered in this rulemaking.

Administrative Flexibility

Comment: One commenter expressed support for the administrative flexibility certified entities could receive regarding NRCS oversight of FRPP-funded easement transactions.

NRCS Response: NRCS believes that the administrative flexibility provided by the certification process implements the statutory changes made to FRPP by the 2008 Act. NRCS is taking this opportunity to identify additional administrative flexibility afforded to certified entities. A certified entity may avail itself of post-closing administrative flexibility as well. In particular, § 1491.22(k) of the FRPP final rule identifies that any changes to the easement deed after its recordation must be consistent with the purposes of the conservation easement and FRPP, and any substantive amendments will require NRCS approval. For certified entities, NRCS will deem amendments submitted by certified entities as approved and will only require the certified entity to provide the NRCS State office a copy of any recorded amendment within 60 days of recording the amendment. NRCS will consider a certified entity's implementation of this administrative flexibility as part of its 3-year certification review cycle and other quality assurance reviews. Any amendment that substantively adversely impacts the conservation values protected by the conservation easement deed may be considered a deficiency in terms of the certified entity's ability to enforce its conservation easement deeds effectively.

Comment: One commenter recommended NRCS not mandate technical reviews of all appraisals, and instead should conduct quality assurance reviews on a sampling of appraisals in conjunction with the title and easement reports for certified entities.

NRCS Response: NRCS has already adopted a practice consistent with this comment in the January 24, 2011, final rule. In particular, § 1491.4(e)(5) states that NRCS will conduct quality assurance reviews of a percentage of the conservation easement transactions submitted by the certified entity for payment. The review will include whether the deed, title review, or appraisals were conducted in accordance with the requirements set forth by NRCS in its certification of the eligible entity or in the cooperative agreement entered into with the certified entity.

NRCS requires industry approved appraisals for every FRPP easement transaction. NRCS performs a technical review to establish that the industry approved appraisal standard and NRCS requirements have been met in the appraisal report. For certified entities, NRCS will not require technical reviews on every appraisal because certified entities have shown competency in administering the program. However, NRCS has a fiduciary responsibility to the Nation's taxpayers to ensure the program is carried out as authorized and that funds expended meet the program's purpose. In order to ensure that Federal dollars have been spent appropriately, NRCS will conduct a sampling of appraisals to ensure compliance with appraisal standards. No changes were made to the final rule as a result of this comment.

Certification Process

Comment: NRCS received a recommendation that there should be an explicit step in the rule that states NRCS will make a certification determination and notify the eligible entity regarding that decision.

NRCS Response: NRCS agrees that the certification determination and notification are necessary steps in the certification process and will notify an eligible entity of the NRCS certification determination with a letter from the Chief or the Chief's designee. Accordingly, NRCS has amended § 1491.4(e) to clarify that NRCS will notify entities in writing whether they have met the certification requirements. If certification is denied, an entity may resubmit their certification application after addressing the application deficiencies.

Comment: NRCS received two comments that several of the certification criteria in § 1491.4(d) appeared redundant to the basic entity eligibility criteria in § 1491.4(c), including criteria related to the timely acquisition of easements and adjustment of procedures to meet program purposes.

NRCS Response: No changes were made to the final rule based on this comment. The criteria identified in § 1491.4(d) are not duplicative of the eligibility criteria. Certification requirements are designed to build upon basic aspects of eligibility in order to provide streamlined acquisition of conservation easements by certified entities. Easement transactions conducted by certified entities occur with reduced oversight by NRCS. NRCS

believes that additional assurance at the time of certification is necessary to ensure certified entities will handle FRPP-funded transactions in an efficient manner that adheres to FRPP requirements.

Comment: One commenter stated that § 1491.4(d)(9) requires a plan for administering easements as ''determined by the Chief.'' This appears to give the Chief unlimited discretion to reject certification requests, suggests uncertainty for the program, and may conflict with State and local land preservation programs' approvals. The commenter argued that there needs to be a way for an entity to judge whether its plan will be found as adequate.

NRCS Response: Given the range of partners in FRPP (over 400), NRCS does not want to circumscribe the content of an entity's plan in regulation. However, NRCS agrees with the commenter that further general guidance would be helpful. Accordingly, NRCS sets forth the following general categories that should be addressed by entities: Monitoring frequency and methodology, site visits, enforcement policies, policies related to when to notify NRCS about easement activities, amendment policies, and methods for periodic communication with landowners. NRCS believes that this flexibility works to the benefit of the applicant, allowing the applicant to demonstrate how its particular stewardship strategy will further FRPP purposes. No changes were made to the final rule as a result of this comment.

Comment: One commenter cautioned that the terms ''certified'' and ''eligible'' need to be used carefully. The word ''qualified'' can be confused with ''certified.'' Under this section, the respondent suggests that for any entity to become certified, it must be eligible. This same commenter recommended that NRCS not require that a request for certification be submitted in conjunction with a request for FRPP funding.

NRCS Response: NRCS agrees that the terms should be clear and that a certification request does not also require a funding request. Any entity seeking certification must meet the basic eligibility requirements identified in § 1491.4(c) which is currently required under § 1491.4(d)(1). Therefore, NRCS has revised the introductory text to § 1491.4(d) to read as follows: ''To be considered for certification, an entity must submit a written request for certification to NRCS, and must: * * *'' NRCS has removed the phrases ''must be qualified to be an eligible entity and'' and ''at the time the entity is requesting FRPP cost-share assistance.''

Comment: NRCS received three comments recommending that NRCS utilize the work of the Land Trust Alliance Accreditation Commission (LTAC) to determine whether an eligible entity has met some or all of the FRPP certification criteria, since the LTAC completes extensive reviews of land trusts to ensure that accredited land trusts have the ability to acquire, manage, and hold.

NRCS Response: NRCS is familiar with the accreditation process used by LTAC and agrees with the commenters that in some instances, LTAC accreditation indicates a high level of competency in areas also required by NRCS. Where LTAC criteria meet or exceed FRPP certification requirements, NRCS will likely determine that an LTAC-accreditation will satisfy those FRPP requirements. However, NRCS also requires that an entity be proficient with the FRPP program and be knowledgeable about FRPP requirements in order to be certified. With respect to those FRPP-specific criteria, each entity will be evaluated by NRCS. No changes were made to the final rule as a result of this comment.

Comments: NRCS received several comments expressing concern about the certification requirement that an entity hold, manage, and monitor a minimum of 25 agricultural land conservation easements and a minimum of 5 FRPP easements. Commenters stated that an entity may have stellar land preservation programs but not meet the agricultural land or numerical requirement because there are fewer farms to enroll. Accordingly, the commenters proposed that waivers should be provided for LTAC accredited land trusts or those entities who have demonstrated through their participation with other organizations or on other land types that they have sufficient conservation easement experience.

Response: As explained in the preamble of the January 24, 2011, FRPP final rule, NRCS based the minimum 25 agricultural land conservation easement requirement upon data from the Land Trust Alliance 2005 National Land Trust Census Report. In particular, NRCS looked at acres owned and under easement by land trusts, the number of land trusts, and the average size FRPP easement. This figure represents the average number of easements held by land trusts, and therefore, serves as an indicator of entity capacity and stability. NRCS recognizes that this number can vary widely between States and regions. Entities with less than 25 easements may be demonstrating high standards in easement acquisition, management, and monitoring. Therefore, NRCS also incorporated a waiver provision in § 1491.4(d)(3) of the January 24, 2011, final rule, allowing entities to be certified even if they do not have the requisite minimum 25 agricultural land conservation easements. However, there is no waiver provision for the requirement that entities hold five FRPP easements. NRCS believes a certified entity should be familiar with FRPP and its requirements before receiving the benefits of certification, and the requirement that the certified entity holds a minimum of five FRPP-funded easements is a fair and reasonable threshold demonstrating such familiarity.

Closing Efficiency

Comment: NRCS received several comments urging NRCS to utilize as its closing efficiency element whether an entity is able to consistently close on its easement within 18 months of the signing of the cooperative agreement. These commenters requested clarification on when NRCS begins measuring the 18 months and asked NRCS to only consider the time for aspects of the process that are within the entity's control. The commenters also identified that because parcel substitutions are allowed, adding or removing projects from a pending offer list should not affect the determination of closing efficiency so long as the majority of parcel transactions on the final list are completed within 18 months.

NRCS Response: NRCS will base closing efficiency upon the time from the execution date of the cooperative agreement or amendment, and the closing date of the easement transaction funded under that cooperative agreement or amendment. The 18-month closing efficiency standard for certification is based upon the current closing efficiency requirement set forth in the FRPP cooperative agreements. NRCS calculates an average completion time for each funding year, and then averages the past 5 years together. The 5-year period of calculation provides an average that mitigates against concerns related to the timing of substitute parcels. NRCS will not remove substituted parcels from these closing efficiency calculations. NRCS has encountered situations where an eligible entity has allowed initial easement transactions to languish and then requested extensions to the cooperative agreement to conduct activities associated with substitute parcels. While allowance for substitute parcels is necessary, the abuse of this practice results in the inefficient use of Federal

funds or staff resources. To ensure fairness in situations where NRCS may have contributed unnecessarily to the delay, NRCS will allow an entity seeking certification to request a waiver of the 18-month closing efficiency requirement. The NRCS State Conservationist will make a recommendation to the Chief based on the information in the waiver request. No changes were made to the final rule to implement this administrative flexibility.

Cooperative Agreements

Comment: NRCS received two comments recommending that the provisions for certified entities be applied retroactively to any cooperative agreements approved since adoption of the changes made by the 2008 Act.

NRCS Response: NRCS is applying the certification provisions to cooperative agreements entered into by NRCS and the certified entity in fiscal year (FY) 2011 or later. The agency has chosen this date because in FY 2011, all partners were required to execute new agreements with the revised cooperative agreement template which incorporated 2008 Act requirements. Choosing this date ensures that all certified entities will be bound by the same requirements when using FRPP funds. NRCS views this decision to be administrative; therefore, no changes were made to the final rule.

Decertification

Comment: NRCS received one comment recommending that NRCS change an entity's review period to coincide with the renewal of the cooperative agreement. The commenter asserted that a 5-year review period will be more efficient and will provide NRCS with a more complete body of work.

NRCS Response: Section 1238I(h)(3)(A) of the FRPP statute requires NRCS to conduct a review of certified entities every 3 years. This review would occur at least once during the life of the 5-year cooperative agreement. No changes were made to the final rule in response to this comment.

Comment: NRCS received one comment about certified entities that may close on easements without prior review of appraisals, deeds, and title commitment. The commenter asserted that decertification of a certified entity should not be based on the NRCS reviewer's conclusions of deficiencies found in an appraisal report or other aspect of the easement transaction. Another commenter requested clarification regarding the appeal rights of a certified entity that has been de-certified.

NRCS Response: Decertification actions are not initiated based on NRCS identification of any particular deficiency that may be revealed in an appraisal or other review. Rather, decertification of a certified entity is based on the entity's failure to remedy one or more of the deficiencies regarding the criteria in § 1491.4(d) within 180 days of receiving notice of such deficiency from NRCS. Additionally, NRCS will provide guidance to the certified entity regarding correcting identified deficiencies. The NRCS decertification decision is not a matter subject to a National Appeals Division appeal because it is not an adverse decision affecting the rights of a participant (see 7 CFR part 11). However, the FRPP decertification process at § 1491.4(f)(2) provides entities subject to decertification an opportunity to contest such action within 20 days of a Notice of Decertification. Eligible entities who are not certified may still participate in FRPP.

Dedicated Fund

Comment: Four commenters requested clarification about the NRCS capitalization requirements for the dedicated fund for easement management, monitoring, and enforcement. Two of these commenters recommended that NRCS consider the capitalization guidelines provided by the Land Trust Alliance accreditation process.

Response: NRCS does not want to dictate capitalization requirements for the land trust community. However, as a general guideline based upon standards in the farmland protection community, NRCS identified in the preamble of the final rule that the dedicated fund must have at least $50,000 for legal defense and $10,000 per easement for management and monitoring.

Comment: NRCS received several comments asking for clarification about whether certified entities must have a dedicated fund for each easement transaction.

Response: NRCS agrees that a dedicated fund is not needed for each transaction. A certified non-governmental entity may have funds reside in a pool dedicated for the management, monitoring, and enforcement of all easements. No changes were made to the final rule in response to these comments.

Quality Assurance

Comment: NRCS received one comment requesting that NRCS conduct all quality assurance reviews prior to the certified entity closing on the transactions since a pre-closing quality assurance review will allow the certified entity to work through any issues.

NRCS Response: NRCS agrees that a pre-closing quality assurance review has less risk than a post-closing review. However, the purpose of the expanded flexibility available to certified entities under the final rule is to improve the efficiency of easement acquisition activities for those responsible entities with a proven track-record. Through the certification process, NRCS determines the ability of an eligible entity to conduct acquisition activities in accordance with FRPP requirements without pre-closing review of each easement transaction. Additionally, a certified entity may consult with NRCS at any time during the easement acquisition process, but it will not be a requirement. No changes were made to the final rule in response to this comment.

List of Subjects in 7 CFR Part 1491

Administrative practice and procedure, Agriculture, Soil conservation.

For the reasons stated above, the Commodity Credit Corporation amends part 1491 of Title 7 of the CFR as set forth below:

PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM

■ 1. The authority citation for part 1491 continues to read as follows:

Authority: 16 U.S.C. 3838h–3838i.

■ 2. Amend § 1491.4 by revising the introductory text of paragraph (d) and the introductory text of paragraph (e) to read as follows:

§ 1491.4 Program requirements.

* * * * *

(d) To be considered for certification, an entity must submit a written request for certification to NRCS, and must:

* * * * *

(e) NRCS will notify an entity in writing whether they have been certified and the rationale for the agency's decision. Once NRCS determines an entity qualifies as certified:

* * * * *

Signed this 2nd day of February 2012, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 2012–3173 Filed 2–9–12; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2012–0154; Special Conditions No. 25–457–SC]

Special Conditions: Learjet Inc., Learjet Model LJ–200–1A10; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Learjet Model LJ–200–1A10 airplane. This airplane will have novel or unusual design features associated with systems that, directly or as a result of failure or malfunction, affect structural performance. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is February 3, 2012. We must receive your comments by March 26, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–0154 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/and* follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1178; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for public comments on, these special conditions are unnecessary. The substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On February 9, 2009, Learjet Inc. applied for a type certificate for their new Model LJ–200–1A10 (hereafter referred to as ''Model LJ–200'') airplane. The Model LJ–200 is a business class aircraft powered by 2 high bypass turbine engines with an estimated maximum takeoff weight of 36,000 pounds and an interior configuration for up to 10 passengers.

The airplane is equipped with systems that, directly or as a result of failure or malfunction, affect its structural performance. Current regulations do not take into account loads for the aircraft due to the effects of system failures on structural performance. These special conditions define criteria to be used in the assessment of the effects of these systems on structures. The general approach of accounting for the effect of system failures on structural performance would be extended to include any system whose partial or complete failure, alone or in combination with other system failures, would affect structural performance.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Learjet Inc. must show that the Model LJ–200 meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–127 thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model LJ–200 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, these special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Model LJ–200 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model LJ–200 will incorporate the following novel or unusual design

features: systems that affect the airplane's structural performance, either directly or as a result of failure or malfunction. That is, the airplane's systems affect how it responds in maneuver and gust conditions, and thereby affect its structural capability. These systems may also affect the aeroelastic stability of the airplane. Such systems include flight control systems, autopilots, stability augmentation systems, load alleviation systems, and fuel management systems. Such systems represent novel and unusual features when compared to the technology envisioned in the current airworthiness standards.

Discussion

Special conditions are needed to require consideration of the effects of systems on the structural capability and aeroelastic stability of the airplane, both in the normal and in the failed state, because these effects are not covered by current regulations.

These special conditions require that the airplane meet the structural requirements of subparts C and D of 14 CFR part 25 when the airplane systems are fully operative. The special conditions also require that the airplane meet these requirements considering failure conditions. In some cases, reduced margins are allowed for failure conditions based on system reliability.

These special conditions establish a level of safety that neither raises nor lowers the standard set forth in the applicable regulations.

Applicability

As discussed above, these special conditions are applicable to the Learjet Model LJ–200–1A10. Should Learjet Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Learjet Model LJ–200–1A10 airplanes.

1. General

For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions on structural performance must be taken into account when showing compliance with the requirements of 14 CFR part 25, subparts C and D. The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, fuel management systems, and other systems that either directly or as a result of failure or malfunction affect structural performance.

(a) The criteria defined herein only address the direct structural consequences of the system responses and performances. They cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative mode are not provided in these special conditions.

(b) Depending upon the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in these special conditions in order to demonstrate the capability of the airplane to meet other realistic conditions such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to these special conditions.

Structural performance: Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (*e.g.*, speed limitations, avoidance of severe weather conditions, *etc.*).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (*e.g.,* fuel, payload and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in these special conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309; however, these special conditions apply only to system failure conditions that affect the structural performance of the airplane (*e.g.,* system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

2. Effects of Systems on Structures

The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(a) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C (or defined by special condition or equivalent level of safety in lieu of those specified in Subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be

investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

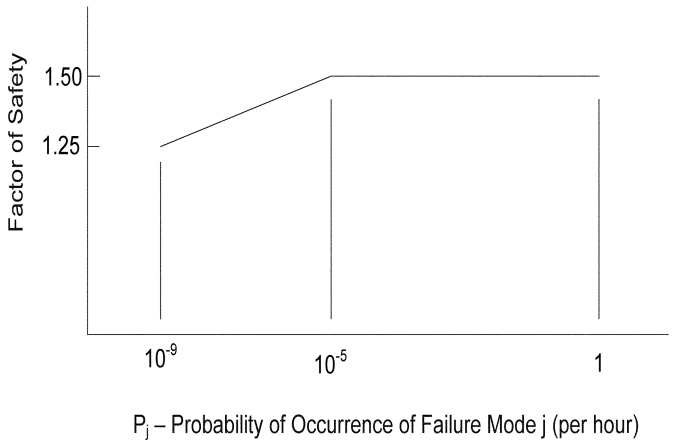
(b) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence, starting from 1-g level flight conditions, a realistic scenario including pilot corrective actions must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads, multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure, are ultimate loads to be considered for design. The factor of safety is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in subparagraph 2(b)(1)(i) of these special conditions. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond V_C/M_C, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane, in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions (or defined by special condition or equivalent level of safety in lieu of the following conditions) at speeds up to V_C/M_C, or the speed limitation prescribed for the remainder of the flight, must be determined:

(A) The limit symmetrical maneuvering conditions specified in § 25.331 and in § 25.345.

(B) The limit gust and turbulence conditions specified in § 25.341 and in § 25.345.

(C) The limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

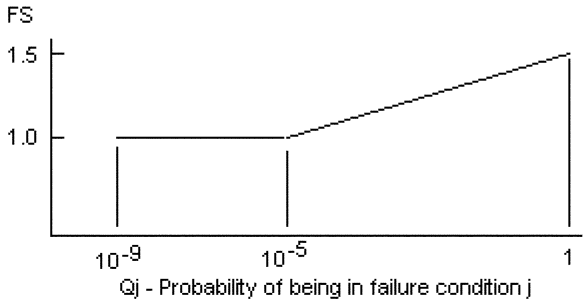
(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in §§ 25.473, 25.491, 25.493(d) and 25.503.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph 2(b)(2)(i) of these special conditions multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of safety (FS) for continuation of flight



$Q_j = (T_j)(P_j)$

Where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in Subpart C.

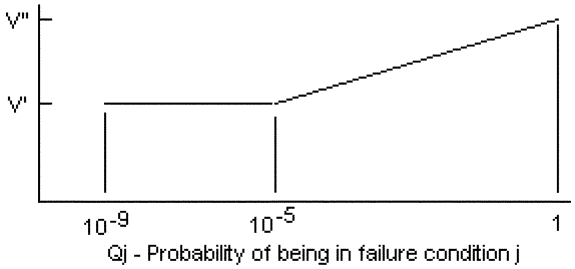
(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph 2(b)(2)(ii) of these special conditions. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3

Clearance speed



V1' = Clearance speed as defined by § 25.629(b)(2).

V'' = Clearance speed as defined by § 25.629(b)(1).

$Q_j = (T_j)(P_j)$

Where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(vi) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).' ''

(3) Consideration of certain failure conditions may be required by other sections of part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(c) *Failure indications.* For system failure detection and indication, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flight crew must be made aware of these failures before flight. Certain elements

of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of detection and indication systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal detection and indication systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flight crew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of Subpart C below 1.25, or flutter margins below V″, must be signaled to the crew during flight.

(d) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met, including the provisions of paragraph 2(a) for the dispatched condition, and paragraph 2(b) for subsequent failures. Expected operational limitations may be taken into account in establishing P_j as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Q_j as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

For each system for which these special conditions are applied, the following must be identified for showing compliance:

(a) The system that either directly or as a result of failure or malfunction affects structural performance;

(b) The failure condition of the system and the probability of that failure;

(c) The structure whose performance is affected directly or as a result of failure or malfunction of the system; and,

(d) The loading condition(s) on the structure affected by the system.

Issued in Renton, Washington, on February 3, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–3077 Filed 2–9–12; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1215

[Notice (12–009)]

RIN 2700–AD72

Tracking and Data Relay Satellite System (TDRSS) Rates for Non-U.S. Government Customers

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule makes non-substantive changes to the policy governing the Tracking and Data Relay Satellite System (TDRSS) services provided to non-U.S. Government users and the reimbursement for rendering such services. TDRSS, also known as the Space Network, provides command, tracking, data, voice, and video services to the International Space Station, NASA's space and Earth science missions, and other Federal agencies, including the Department of Defense and the National Science Foundation. For a fee, commercial users can also have access to TDRSS for tracking and data acquisition purposes. Over the last 25 years, TDRSS has delivered pictures, television, scientific, and voice data to the scientific community and the general public, including data from more than 100 Space Shuttle and International Space Station missions and the Hubble Space Telescope. A principal advantage of TDRSS is providing communications services, which previously have been provided by multiple worldwide ground stations, with much higher data rates and lower latency to the user missions.

DATES: This direct final rule is effective April 10, 2012 unless the Agency receives significant adverse comments by midnight Eastern Standard Time on March 12, 2012.

ADDRESSES: Comments must be identified with ''RIN 2700–AD72'' and may be sent to NASA by the following method:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Please note that NASA will post all comments on the Internet without change, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For more information on the Tracking and Data Relay Satellite System visit: *https://www.spacecomm.nasa.gov/spacecomm/programs/Space_network.cfm.* Questions may be directed to Jon Walker at (202) 358–2145 or via email at *Jon.Z.Walker@nasa.gov.*

SUPPLEMENTARY INFORMATION: The regulations pertaining to TDRSS were originally published in 1983 and, apart from minor revisions in 1991 and the revision to the rates in 1997, have not been updated and do not reflect current operating procedures for determining how fees are charged, billed, or received. In addition to updating the fee structure, this rule also removes and replaces obsolete references. Finally, this rule responds to recommendations from a NASA IG Audit of the TRDSS program. These rule changes will ensure non-U.S. Government users of TDRSS properly reimburse NASA for services provided to them and share in the costs of system upgrades. The revisions to this rule are part of NASA's retrospective plan under EO 13563 completed in August 2011. NASA's full plan can be accessed at: *http://www.nasa.gov/pdf/581545main_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf.*

I. Direct Final Rule and Significant Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves non-substantive changes dealing with NASA's management of TDRSS program. NASA expects no opposition to the changes and no significant adverse comments. However, if NASA receives a significant adverse comment, the Agency will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a

substantive response in a notice and comment process.

II. Statutory Authority

TDRSS was established under the National Aeronautics and Space Act of 1958. The primary goal of TDRSS is to provide improved tracking and data acquisition services capability to spacecraft in low-Earth orbit or to mobile terrestrial users such as aircraft or balloons. The reimbursement policy to achieve efficient TDRSS usage complies with the Office of Management and Budget Circular A–25 on User Charges, which requires that a reasonable charge should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which a special benefit is derived. Additional information on A–25 can be found at: *http://www.whitehouse.gov/omb/circulars_a025.*

The cost base for TDRSS consists of two elements. The first element is the return on investment (ROI) portion which represents the cost of the assets necessary to provide communications services. The second element is the costs for the ongoing operations and maintenance (O&M) of the network which provides the communications services. The return on investment portion of the cost base amortizes these investment costs over a beneficial accounting period related to the lifetime of the assets. Due to the extraordinary longevity of the first generation spacecraft and utilization of satellite store onorbit approach for spare satellites, the spacecraft and their launch vehicles are amortized over a twenty-five year lifetime. For ground segment costs, a period of 20 years is utilized. Although the nominal lifetime of software systems is usually ten years, the network has a vigorous sustaining engineering program which repairs/replaces equipment, updates and tests software modifications, conducts major complex upgrades, and accomplishes other activities which extend the useful lifetime.

The O&M portion of the cost base are averaged over a five-year window (current budget year (BY) plus four) to dampen fluctuations from year to year and add stability to the derived reimbursement rates. These costs reflect the total funding requirements for the network, not just those in NASA's direct budget which may reflect offsetting reimbursements anticipated. Due to changes in the Agency approach to management and budgeting for institutional portions of the full costs of Center operations in 1999, the field Center submissions to the program office no longer include these cost elements, which are separately managed and budgeted by other Agency organizations. These cost elements Center Operations and Maintenance (CO&M), are added to the submission data to capture the full costs of service provision. For more information visit: *http://oig.nasa.gov/audits/reports/FY99/pdfs/ig-99–024.pdf.*

The total cost base is the sum of the ROI and the O&M elements. The cost base is inserted into the algorithm along with spacecraft cost factor (based on original plans), the link time available (total time available), the number of links (high data single access, low rate multiple-access forward, and low rate multiple-access return), and overall efficiency of the service (varies between services). In terms of user charges for the program going forward, the user rates will be recalculated on a periodic basis, removing TDRSS spacecraft that are no longer operational and updating the five-year average O&M cost component as budgets are updated.

Many sections of Part 1215 (*i.e.,* Sections 1215.100, 1215.101, 1215.102, 1215.103, 1215.105, 1215.106, 1215.108, 1215.109, 1215.112, 1215.113, 1215.114, and 1215.115) are being updated and rewritten, mainly due to the passage of time. Outdated terms and missions have been updated or removed, additional system capabilities have been added and are now described, and new Web site references are being added to keep information current (without requiring constant updates to the CFR). A section-by-section description of the changes is provided in paragraph III below. Appendices A and B are being deleted from the CFR. Appendix A was the Estimated Service Rates in 1997 Dollars for TDRSS Standard Services which are very much out of date. The current Fiscal Year rates will instead be placed on the Space Communications and Navigation Program (SCaN) Web site and updated periodically. This was done to enable easier public access to the information and to keep the information current. The need to frequently update the CFR as Service Rates change is thus obviated. Appendix B was an obsolete list of Factors Affecting Standard Charges. These factors were initially thought to reward customer flexibility, allowing more efficient use of the system. This notion was never implemented in the Service Accounting System and determined to be more expensive to include than the difference in revenue would cover. The Service Accounting System is the offline NASA system that keeps track of individual mission schedule requests and actual use provided. Thus, Appendix B, containing usage factors never implemented in the system, was deleted.

III. Regulatory Background

TDRSS is a network of U.S. communication satellites and ground stations used by NASA for space communications near the Earth. The system was designed to replace an existing network of ground stations that had supported all of NASA's spaceflight missions. The primary design goal was to increase the time spacecraft were in communication with the ground and improve the amount of data that could be transferred. The system is capable of transmitting to and receiving data from spacecraft over at least 85 percent of the spacecraft's orbit. For a fee, this system is also accessible to university satellite programs, small commercial Earth-imaging programs, and other commercial customers, as well as Arctic and Antarctic science programs. In this direct final rule, NASA is documenting the present way of doing business and removing the actual rate from the rule and direct the users to a location on a public NASA Web site where the updated rates can be found.

Since the rates could change annually, NASA desires the flexibility not to amend the CFR each time the rates change. Current rate information can be accessed at: *https://www.spacecomm.nasa.gov/spacecomm/programs/Space_network.cfm.* Scroll down to and click on the first item under Related Information for the Space Network Reimbursable Rates for the current fiscal year. This rule also amends the CFR by updating certain sections, conforming them to the program's current operation.

IV. Section-by-Section Analysis

1215.100 General

A redundant sentence was taken out of the explanation of why TDRSS was formed.

1215.101 Scope

Outdated references to missions that are no longer operational were taken out. References to the Spacelab and Space Shuttle were removed. NASA organizational changes are also reflected. The TDRSS program now resides with the SCaN.

1215.102 Definitions

TDRSS has an additional ground terminal called the Guam Remote Ground Terminal (GRGT). Flexible support and constrained support are outdated terms and have been removed. As stated earlier, these factors were initially thought to reward customer

flexibility, allowing more efficient use of the system. This notion was never implemented in the Service Accounting System and was determined to be more expensive to include than the difference in revenue would cover. Thus, these terms were deleted.

1215.103 Services

Outdated terms and location references were taken out. Emergency line outage recording in the event of a communications failure between the White Sands Complex (WSC), Goddard Space Flight Center (GSFC), and Johnson Space Center (JSC); a weekly user spacecraft orbit determination in NASA standard orbital elements as determined by NASA for TDRSS target acquisition purposes; delivery of user data at the NASA Ground Terminal (NGT) located at WSC; and access to tracking data to enable users to perform orbit determination at their option were all removed. They are either services applicable to all customers as a part of TDRSS (line outage recording, access to tracking data), services not performed by TDRSS (user spacecraft orbit determination), or services to facilities no longer in existence (NGT) due to TDRSS upgrades. A detailed description of the services of TDRSS can be found in the Space Network User Guide (SNUG). The SNUG is available at: *http://esc.gsfc.nasa.gov/assets/files/SN_UserGuide.pdf,* and is useful to new customers who would like more detail about TDRSS. NASA customer commitment personnel work with new customers to understand what services TDRSS can provide and help them to select the necessary and appropriate services they may require.

1215.104 Apportionment and Assignment of Services

No change.

1215.105 Delivery of User Data

Outdated terms and location references were taken out. The NGT, as stated earlier, is a facility no longer in existence due to TDRSS upgrades. The NASA Communications Network (NASCOM) has been renamed the NASA Integrated Services Network (NISN). The NISN links data between NASA facilities and customers via commercial fiber optic cables and/or commercial communications satellites. In the event one of these circuits were to fail, TDRSS provides line outage recording to capture user data and forward it to customers once the circuits are repaired.

1215.106 User Command and Tracking Data

References to the GRGT were added. This NASA ground asset is a system upgrade and was added (since the last CFR update) to provide additional capacity and coverage of TDRSS. The Flight Dynamics Facility (FDF), now part of SCaN, provides orbit determination services. References to the Space Shuttle and Johnson Space Center were removed, both because the Shuttle program has ended and because the Space Shuttle was not a commercial, non-governmental TDRSS user. Again, the reference to the obsolete NGT was also removed.

1215.107 User Data Security and Frequency Authorizations

No change.

1215.108 Defining User Service Requirements

Requirements were updated to reflect the current process. The Networks Integration Management Office (NIMO) is the office for defining user requirements. Addresses were updated to reflect new locations and current organizations.

1215.109 Scheduling User Service

Outdated mission and location references were removed. The Network Control Center in Maryland was moved to New Mexico and renamed. The Space Shuttle program has ended. The CFR update reflects both these changes. Services that are no longer available from TDRSS were removed. Additional information can be found in Appendix A of this section of the CFR which shows a Typical New User Activity Timeline and the SNUG, which was described in Section 1215.103.

1215.110 User Cancellation of All Services

No change.

1215.111 User Postponement of Service

Organizational codes and locations were updated to reflect the current NASA organization.

1215.112 User/NASA Contractual Arrangement

NASA Policy Directive 1050.1I, Authority to Enter into Space Act Agreements (SAA), indicates that a SAA must be signed in order for reimbursable services to be rendered. This document is available at: *http://nodis3.gsfc.nasa.gov/displayDir.cfm?t=NPD&c=1050&s=1I.*

1215.113 User Charges

Number of hours before start of service changed (increased from 12 to 72 hours) to provide more lead time for the TDRSS schedulers to rearrange or add other missions' services times. This is to provide as much usable service to other customers as possible, since last-minute services cancellations are usually not useful to other customers due to their long mission planning times.

1215.114 Service Rates

Service rates were removed and placed on the SCaN Web site: *https://www.spacecomm.nasa.gov/spacecomm/programs/Space_network.cfm* for easier public access to the information. Scroll down and click on the first item under Related Information for the Space Network Reimbursable Rates for the current fiscal year.

1215.115 Payment and Billing

SCaN has updated and simplified user method of payment to reflect current practice. The notion of two service periods was not used, and thus removed. Mission-unique services did not have to be called out separately and was removed. All service payments are billed and payable as described in this section.

Appendix A

Appendix A contained the 1997 service rates which are obsolete and were removed. The current rates were placed on the SCaN Web site: *https://www.spacecomm.nasa.gov/spacecomm/programs/Space_network.cfm* for easier public access to the information. Scroll down and click on the first item under Related Information for the Space Network Reimbursable Rates for the current fiscal year.

Appendix B

Appendix B contained an obsolete list of Factors Affecting Standard Charges. These factors were initially thought to reward customer flexibility, allowing more efficient use of the system. This notion was never implemented in the Service Accounting System and determined to be more expensive to include than the difference in revenue would cover. Thus, Appendix B, containing usage factors never implemented in the system, was deleted.

Appendix C

This Appendix was updated and renamed Appendix A, to reflect the changes in § 1215.115, 1215.107, 1215.109, and 1215.113.

IV. Regulatory Analysis

A. Executive Order 12866—Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

It has been certified that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule implements the internal procedures for the effective administration of TDRSS.

C. Paperwork Reduction Act Statement

This final rule does contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 14 CFR Part 1215

TDRSS, Space communications, Satellites.

Therefore, NASA amends 14 CFR part 1215 as follows:

PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

■ 1. The authority citation for part 1215 is revised to read as follows:

Authority: Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

■ 2. Section 1215.100 is revised to read as follows:

§ 1215.100 General.

TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low-Earth orbit or to mobile terrestrial users such as aircraft or balloons. It is the objective of NASA to operate as efficiently as possible with TDRSS, is to the mutual benefit of all users. Such user consideration will permit NASA and non-NASA service to be delivered without compromising the mission objectives of any individual user. The reimbursement policy is designed to comply with the Office of Management and Budget Circular A–25 on User Charges, dated September 23, 1959, as updated, which requires that a reasonable charge should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which a special benefit is derived.

■ 3. Section 1215.101 is revised to read as follows:

§ 1215.101 Scope.

This subpart sets forth the policy governing TDRSS services provided to non-U.S. Government users and the reimbursement for rendering such services. Cooperative missions are not under the purview of this subpart. The arrangements for TDRSS services for cooperative missions will be covered in an agreement, as a consequence of negotiations between NASA and the other concerned party. Any agreement which includes provision for any TDRSS service will require signatory concurrence by the Deputy Associate Administrator for SCaN prior to dedicating SCaN resources for support of a cooperative mission.

■ 4. Section 1215.102 is revised to read as follows:

§ 1215.102 Definitions.

(a) *User.* Any non-U.S. Government representative or entity that enters into an agreement with NASA to use TDRSS services.

(b) *TDRSS.* TDRSS, including Tracking and Data Relay Satellites (TDRS), WSC, GRGT, and the necessary TDRSS operational areas, interface devices, and NASA communication circuits that unify the above into a functioning system. It specifically excludes the user ground system/TDRSS interface.

(c) *Bit stream.* The electronic signals acquired by TDRSS from the user craft or the user-generated input commands for transmission to the user craft.

(d) *Scheduling service period.* One scheduled contact utilizing a single TDRS, whereby the user, by requesting service, is allotted a block of time for operations between the user satellite and TDRSS.

■ 5. Section 1215.103 is revised to read as follows:

§ 1215.103 Services.

(a) *Standard services.* These are services which TDRSS is capable of providing to low-Earth orbital user spacecraft or other terrestrial users. Data are delivered to WSC or GRGT. A detailed description of services is provided in the GSFC Space Network Users' Guide, 450–SNUG. Contact the Chief, Networks Integration Management Office, at the address in Section 1215.108(d) to obtain a copy of the SNUG.

(1) Tracking service.

(2) Data acquisition service.

(3) Command transmission service.

(b) *Required Support Services.* These are support activities that are required to obtain TDRSS services.

(1) Prelaunch support planning, analysis, and documentation.

(2) Compatibility testing.

(3) Prelaunch support for data-flow testing and related activities.

(4) User services scheduling.

(c) *Mission-unique services.* Other tracking and data services desired by the user that are beyond the standard and required support services defined above. The associated charges for these services will be identified and assessed on a case-by-case basis.

■ 6. Section 1215.105 is revised to read as follows:

§ 1215.105 Delivery of user data.

(a) As a standard service, NASA will provide to the user its data from TDRSS in the form of one or more digital or analog bit streams synchronized to associated clock streams at WSC or GRGT.

(b) User data-handling requirements beyond WSC or GRGT interface will be provided as a standard service to the user, to the extent that the requirements do not exceed NASA's planned standard communications system. Any additional data transport or handling requirements exceeding NASA's capability will be dealt with as a mission-unique service.

(c) No storage of the user data is provided in the standard service. NASA will provide short-term temporary recording of data at WSC in the event of a NASA Integrated Services Network (NISN) link outage.

(d) NASA will provide TDRSS services on a ''reasonable efforts'' basis, and, accordingly, will not be liable for damages of any kind to the user or third parties for any reason, including, but not limited to, failure to provide agreed-to services. The price for TDRSS services does not include a contingency or premium for any potential damages. The user will assume any risk of damages or obtain insurance to protect against any risk.

■ 7. Section 1215.106 is revised to read as follows:

§ 1215.106 User command and tracking data.

(a) User command data shall enter TDRSS via the NISN interface at WSC or GRGT.

(b) NASA is required to have knowledge of the user satellite orbital elements to sufficient accuracy to permit TDRSS to establish and maintain acquisition. This can be accomplished in two ways:

(1) The user can provide the orbital elements in a NASA format to meet TDRSS operational requirements.

(2) The user shall ensure that a sufficient quantity of tracking data is received to permit the determination of the user satellite orbital elements. The Flight Dynamics Facility (FDF) at GSFC will provide the orbit determination service to these users. The charges for this service will be negotiated between the FDF and the user and will be dependent on user requirements.

■ 8. Section 1215.108 is revised to read as follows:

§ 1215.108 Defining user service requirements.

Potential users should become familiar with TDRSS capabilities and constraints, which are detailed in the SNUG, as early as possible. This action allows the user to evaluate the trade-offs available among various TDRSS services, spacecraft design, operations planning, and other significant mission parameters. It is recommended that potential users contact the NIMO as early as possible for assistance in performing the trade studies. When these evaluations have been completed, and the user desires to use TDRSS, the user should initiate a request for TDRSS service.

(a) Initial requests for TDRSS service from non-U.S. Government users shall be addressed to SCaN at NASA Headquarters, as follows: Deputy Associate Administrator: Space Communications and Navigation Division, National Aeronautics and Space Administration, Washington, DC 20546.

(b) Upon review and acceptance of the service request, preliminary analyses shall be performed to determine the feasibility of meeting the proposed requirements.

(c) If the request is determined to be feasible, the user and SCaN shall negotiate an agreement for provision of the requested services. Acceptance of user requests for TDRSS service is the sole prerogative of NASA.

(d) Upon approval of the agreement by both parties, GSFC will be assigned to produce the detailed requirements, plans, and documentation necessary for support of the mission. Changes to user requirements shall be made as far in advance as possible and shall be submitted, in writing, to both SCaN at NASA Headquarters (see Section 108, paragraph (a) for mailing address) and GSFC, as follows: Chief: Networks Integration Management Office, Code 450.1, NASA Goddard Space Flight Center, M/S 450.1, 8800 Greenbelt Road Greenbelt, MD 20771.

■ 9. Section 1215.109 is revised to read as follows:

§ 1215.109 Scheduling user service.

(a) User service shall be scheduled only by NASA. TDRSS services will be provided in accordance with operational priorities established by the NASA Administrator or his/her designee. See Appendix A for a description of a typical user activity timeline.

(b) Schedule conflict will be resolved in general by application of principles of priority to user service requirements. Services shall be provided either as normally scheduled service or as emergency service. Priorities will be different for emergency service than for normal services.

(1) Normally scheduled service is service which is planned and ordered under normal operational conditions and is subject to schedule conflict resolution under normal service priorities. Requests for normally scheduled service must be received by the schedulers at the GSFC WSC Data Services Management Center (DSMC) no later than 21 days prior to the requested support time.

(2) At times, emergency service requirements will override normal schedule priority. Under emergency service conditions, disruptions to scheduled service will occur.

(3) The DSMC reserves the sole right to schedule, reschedule, or cancel TDRSS service.

(4) NASA schedulers will exercise judgment and endeavor to see that lower-priority users are not excluded from a substantial portion of their contracted-for service due to the requirements of higher-priority users.

(c) General user service requirements, which will be used for preliminary planning and mission modeling, should include all pertinent information necessary for NASA to determine if the proposed service is achievable. Contact NIMO to discuss usage and requirements.

(d) Such user service requirements information typically includes:

(1) Date of service initiation.

(2) The type of TDRSS services desired (*e.g.,* multiple access, tracking, *etc.*), and the frequency and duration of each service.

(3) Orbit or trajectory parameters and tracking data requirements.

(4) Spacecraft events significant to tracking, telemetry or command requirements.

(5) Communications systems specifics, including location of antennas and other related information dealing with user tracking, command, and data systems.

(6) Special test requirements, data flows, and simulations, *etc.*

(7) Identification of terrestrial data transport requirements, interface points, and delivery locations, including latency and line loss recovery.

(e) To provide for effective planning, reference Appendix A, Typical New User Activity Timeline.

■ 10. Section 1215.112 is revised to read as follows:

§ 1215.112 User/NASA contractual arrangement.

No service shall be provided without an approved agreement.

■ 11. Section 1215.113 is revised to read as follows:

§ 1215.113 User charges.

(a) The user shall reimburse NASA the sum of the charges for standard and mission-unique services. Charges will be based on the service rates applicable at the time of service.

(b) For standard services, the user shall be charged only for services rendered, except that if a total cancellation of service occurs, the user shall be charged in accordance with the provisions of § 1215.110.

(1) Standard services which are scheduled, and then cancelled by the user less than 72 hours prior to the start of that scheduled service period, will be charged as if the scheduled service actually occurred.

(2) The time scheduled by the user project shall include the slew time, set up and/or configuration time, TDRSS contact time, and all other conditions for which TDRSS services were allocated to the user.

(3) Charges will be accumulated by the minute, based on the computerized schedule/configuration messages which physically set up TDRSS equipment at the start of a support period and free the equipment for other users at the end of a support period.

(c) The user shall reimburse NASA for the costs of any mission-unique services provided by NASA.

■ 12. Section 1215.114 is revised to read as follows:

§ 1215.114 Service rates.

(a) Rates for TDRSS services will be established by the DAA for SCaN.

(b) Per-minute rates will reflect TDRSS total return on investment and operational and maintenance costs.

(c) The rate per minute by service and type of user is available on the following Web site: *https://www.spacecomm.nasa.gov/spacecomm/programs/Space_network.cfm.*

(d) The per-minute charge for TDRSS service is computed by multiplying the charge per minute for the appropriate service by the number of minutes utilized.

■ 13. Section 1215.115 is revised to read as follows:

§ 1215.115 Payment and billing.

(a) The procedure for billing and payment of standard TDRSS services is as follows:

(1) NASA shall be reimbursed by customers in connection with the use of Government property and services provided under an approved reimbursable agreement. Advance payment for services is required. Advance payments shall be scheduled to keep pace with the rate at which NASA anticipates incurring costs. NASA will provide a Customer Budget/Estimate (CBE) for services rendered nominally 60–90 days in advance, or as otherwise agreed, of the first anticipated property use or required service date for each mission. The full cost of the mission shall be paid by the customer not later than 30 days prior to the first anticipated property use or required service date.

(2) In some cases, an advance partial payment will be required six—nine months prior to the first anticipated property use or required service date in order for advance planning work and/or travel to take place. The amount of this partial payment and its receipt shall be negotiated on an as-needed basis. Adjustments to the amounts prepaid will be made to the succeeding billings as the actual services are rendered.

(3) If the customer fails to make payment by the payment due date, NASA may terminate the agreement and any subagreements for breach of agreement after notice to the customer is given of this breach and failure to cure such breach within a time period established by NASA.

(b) Late payments by the user will require the user to pay a late payment charge.

■ 14. Appendix A is revised to read as follows:

Appendix A to Part 1215—Estimated Service Rates in 1997 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)

Time: Project conceptualization (at least two years before launch; Ref. § 1215.108(a)).

Activity: Submit request for access to TDRSS. Upon preliminary acceptance of the service requirements by NASA Headquarters, communications for the reimbursable development of a Space Act Agreement (SAA) will begin. Prior to finalization of the Memorandum of Agreement (MOA), an estimate for the services will be issued. After SAA signature, full funding of the effort must be received prior to NASA initiating any activities associated with the effort. (Ref. § 1215.115(a)(1)).

Time: 18 months before launch (Ref. § 1215.109(c).

Activity: After full funding has been received and distributed to the executing NASA entities, submit general user requirements to permit preliminary planning. Contact will occur to facilitate the integration process for access to TDRSS. If appropriate, initiate action with the Federal Communications Commission for license to communicate with TDRSS (Ref. § 1215.107(b)).

Time: 12 months before launch (earlier if possible).

Activity: Provide detailed requirements for technical definition and development of operational and interface control documents. (Ref. § 1215.109(d)).

Time: 3 weeks prior to a Scheduled Support Period (SSP).

Activity: Submit scheduling request to NASA covering a weekly period. Receive schedule from NASA based on principles of priority (Ref. § 1215.109(b)). User confirmation of the schedule is required.

Time: Up to 72 hours prior to an SSP.

Activity: Can cancel an SSP without charge (Ref. § 1215.113(b)(1)).

Time: Up to 45 minutes prior to an SPP.

Activity: Can schedule an SSP if a time slot is available without impacting another user.

Time: Up to 10 minutes prior to an SSP.

Activity: Can schedule an SSP utilizing TDRSS unused time (TUT).

Charles F. Bolden, Jr.,

Administrator.

[FR Doc. 2012–2652 Filed 2–9–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2008–0384]

RIN 1625–AA00; 1625–AA08; 1625–AA87

Special Local Regulations; Safety and Security Zones; Recurring Events in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing, adding, and consolidating limited access areas in the Coast Guard Sector Long Island Sound Captain of the Port (COTP) Zone. These limited access areas include special local regulations, permanent safety zones for annual recurring marine events and a permanent security zone. When these limited access areas are subject to enforcement, this rule will restrict vessels from portions of water areas during these annual recurring events. The special local regulations and safety zones will facilitate public notification of events, and ensure the protection of the maritime public and event participants from the hazards associated with these annual recurring events.

DATES: This rule is effective March 12, 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–2008–0384 and are available online by going to *http://www.regulations.gov,* inserting USCG–2008–0384 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 proposed rule, call or email Petty Officer Joseph Graun, Waterways Management Division at Coast Guard Sector Long Island Sound, telephone 203–468–4544, email *joseph.l.graun@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 22, 2011 the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations; Safety and Security Zones; Recurring Events in Captain of the Port Long Island Sound Zone in the **Federal Register** (76 FR 36438). We received no comments on the proposed rule. No public meeting was requested and none was held.

Basis and Purpose

The legal basis for this rule is the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1226, 1231); 33 U.S.C. 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1. These laws, regulations and policies authorize the Coast Guard to define regulatory safety zones, security zones and special local regulations, and delegate the authority to create these regulations to the Captain of the Port.

This regulation carries out three related actions: (1) Establishing necessary safety zones and special local regulations, (2) establishing one necessary security zone, and (3) updating and reorganizing existing regulations for ease of use and reduction of administrative overhead.

Background

The Coast Guard is adding 33 CFR 100.100 and revising §§ 165.151 and 165.154. The changes will remove 37 regulated areas, establish 33 new safety zones, three special local regulations, and one security zone, and consolidate and simplify these regulations. By establishing a permanent regulation containing these events, the Coast Guard will eliminate the need to establish temporary rules for events that occur on an annual basis.

The rule applies to the annual recurring events listed in the attached Tables in the COTP Long Island Sound Zone. The Tables provide the event name, and type, as well as locations of the events. Annual notifications will be made to the local maritime community through all appropriate means such as Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events. If the event does not have a date listed, then exact dates and times of the enforcement period will be announced through a Notice of Enforcement in the **Federal Register**.

This regulation is part of a review and update of local regulations. Our intent is to update and reorganize information for ease of use and reduction of administrative overhead. We considered several alternative formats for this regulation including different table formats. Ultimately the presented format was chosen.

Discussion of Comments and Changes

We received no comments on the rule.

The following changes were made. We enhanced the regulatory text of § 100.100 clarifying and detailing what method the Coast Guard will use to notify the public of event specific information.

Typographical error correction, in the NPRM we stated, we propose to establish 32 new safety zones. The number 32 was a typographical error, because 33 new safety zones were discussed throughout the NPRM. Notice and the opportunity to comment on the 33 zones existed in the NPRM prior to this final rule. The typographical error has been updated in the Backgrounds section of this rule.

Positions which were described using ''Degrees-Minutes-Decimal Minutes'' format (DD°MM.MMM′) were converted without change to ''Degrees-Minutes-Seconds'' (DD°MM′ SS″), for consistency throughout the regulations.

Positions which were described using decimal seconds out to the thousandths of a second (DD°MM′ SS.SSS″) were rounded off to hundredths of a second (DD°MM′ SS.SS″). One one-thousandth of a second (.001″) is a distance of approximately 1.2 inches. Positions were rounded off to the nearest hundredth to reduce confusion and make the positions easier to use. The maximum change in any regulated area is less than 1 foot (the diagonal of a theoretical point which moved 0.05 seconds (0.05″ or about 6 inches) due to rounding in both latitude and longitude.

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.

Executive Order 12866 and Executive Order 13563

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons:

The Coast Guard has previously promulgated safety zones, security zones or special local regulations, in accordance with 33 CFR Parts 100 and 165, for all event areas contained within this regulation and has not received notice of any negative impact caused by any of the safety zones, security zones or special local regulations.

Vessels will only be restricted from safety zones and special local regulation areas for a short duration of time. Vessels may transit in portions of the affected waterway except for those areas covered by the regulated areas. Notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners or through a Notice of Enforcement in the **Federal Register**. No new or additional restrictions would be imposed 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 will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the designated regulated area during the enforcement periods.

The regulated areas will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated areas will be of limited size and of short duration; vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas; these regulated areas have been promulgated in the past with no public comments submitted. Additionally, before the effective period, the Coast Guard will issue notice of the time and location of each regulated area through a Local Notice to Mariners and Broadcast Notice to Mariners or through a Notice of Enforcement in the **Federal Register**.

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, paragraphs (34)(g)&(h) of the Instruction. This rule involves the establishment of safety and security zones and special local regulations. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 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. Add a new § 100.100 to read as follows:

§ 100.100 Special Local Regulations; Regattas and Boat Races in the Coast Guard Sector Long Island Sound Captain of the Port Zone.

(a) The following regulations apply to the marine events listed in the Table to § 100.100. These regulations will be enforced for the duration of each event, on or about the dates indicated. Notifications will be made to the local maritime community through all appropriate means such as Local Notice to Mariners or Broadcast Notice to Mariners well in advance of the events. If the event does not have a date listed,

then exact dates and times of the enforcement period will be announced through a Notice of Enforcement in the **Federal Register**. The First Coast Guard District Local Notice to Mariners can be found at: *http://www.navcen.uscg.gov/*.

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

(1) *Designated representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector Long Island Sound (LIS), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official patrol vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

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

(c) Although listed in the Code of Federal Regulations, sponsors of events listed in Table to § 100.100 are still required to submit marine event applications in accordance with 33 CFR 100.15.

(d) Vessel operators desiring to enter or operate within the regulated areas shall contact the COTP at 203–468–4401 (Sector LIS command center) or the designated representative via VHF channel 16.

(e) Vessels may not transit the regulated areas without the COTP or designated representative approval. Vessels permitted to transit must operate at a no wake speed, in a manner which will not endanger participants or other crafts in the event.

(f) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or designated representative.

(g) The COTP or designated representative may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(h) The COTP or designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(i) For all power boat races listed, vessels not participating in this event, swimmers, and personal watercraft of any nature are prohibited from entering or moving within the regulated area unless authorized by the COTP or designated representative. Vessels within the regulated area must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event.

TABLE TO § 100.100

1.1 Harvard-Yale Regatta, Thames River, New London, CT.	• Event type: Boat Race. • Date: Last Saturday in May through second Saturday of June, from 8 a.m. until 5 p.m. • Location: All waters of the Thames River at New London, Connecticut, between the Penn Central Draw Bridge 41°21′46.94″ N 072°05′14.46″ W to Bartlett Cove 41°25′35.90″ N 072°5′42.89″ W (NAD 83). • Additional stipulations: Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event at least 30 minutes prior to the start of the races. They must remain moored or at anchor until the men's varsity have passed their positions. At that time, spectator vessels located south of the Harvard Boathouse may proceed downriver at a reasonable speed. Vessels situated between the Harvard Boathouse and the finish line must remain stationary until both crews return safely to their boathouses. If for any reason the men's varsity crew race is postponed, spectator vessels will remain in position until notified by Coast Guard or regatta patrol personnel. The last 1000 feet of the race course near the finish line will be delineated by four temporary white buoys provided by the sponsor. All spectator craft shall remain behind these buoys during the event. Spectator craft shall not anchor: to the west of the race course, between Scotch Cap and Bartlett Point Light, or within the race course boundaries or in such a manner that would allow their vessel to drift or swing into the race course. During the effective period all vessels shall proceed at a speed not to exceed six knots in the regulated area. Spectator vessels shall not follow the crews during the races. Swimming is prohibited in the vicinity of the race course during the races. A vessel operating in the vicinity of the Submarine Base may not cause waves which result in damage to submarines or other vessels in the floating drydocks.
1.2 Great Connecticut River Raft Race, Middletown, CT.	• Event type: Boat Race. • Date: Last Saturday in July through the first Saturday in August, from 10 a.m. until 2 p.m. • Location: All waters of the Connecticut River Middletown, CT between Dart Island (Marker no. 73) 41°33′08.24″ N 072°33′24.46″ W and Portland Shoals (Marker no. 92) 41°33′46.83″ N 072°38′42.18″ W (NAD 83).
1.3 Head of the Connecticut Regatta, Connecticut River, CT.	• Event type: Boat Race. • Date: The second Saturday of October, from 7:30 a.m. until 5 p.m. • Location: All waters of the Connecticut River between the southern tip of Gildersleeve Island 41°36′03.61″ N 072°37′18.08″ W and Light Number 87 41°33′32.91″ N 072°37′15.24″ W (NAD 83). • Additional stipulations: Vessels less than 20 meters in length will be allowed to transit the regulated area only under escort and at the discretion of the Coast Guard patrol commander. Vessels over 20 meters in length will be allowed to transit the regulated area, under escort, from 12:30 p.m. to 1:45 p.m. or as directed by the Coast Guard patrol commander. All transiting vessels shall operate at "No Wake" speed or five knots, whichever is slower. Southbound vessels awaiting escort through the regulated area will wait in the vicinity of the southern tip of Gildersleeve Island. Northbound vessels awaiting escort will wait at Light Number 87.

TABLE TO § 100.100—Continued

1.4 Riverfront Regatta, Hartford, CT	• Event type: Regatta. • Date: The first Sunday of October, from 8:30 a.m. until 4:30 p.m. • Location: All water of the Connecticut River, Hartford, CT, between the Putnum Bridge 41°42′52.20″ N 072°38′25.80″ W and the Riverside Boat House 41°46′25.20″ N 072°39′49.80″ W (NAD 83).
1.5 Patchogue Grand Prix, Patchogue, NY.	• Event type: Boat Race. • Date: The last weekend of August Friday, Saturday and Sunday, from 11 a.m. until 5 p.m. • Location: All water of the Great South Bay, off Shorefront Park, Patchogue, NY from approximate position: Beginning at a point off Sand Spit Park, Patchogue, NY at position 40°44′45″ N, 073°00′51″ W then running south to a point in Great South Bay at position 40°43′46″ N, 073°00′51″ W then running south east to position 40°43′41″ N, 073°00′20″ W then running north east to position 40°43′54″ N, 072°58′46″ W then east to position 40°43′58″ N, 072°57′32″ W then east to position 40°43′57″ N, 072°56′49″ W then north to position 40°44′18″ N, 072°56′49″ W then west to position 40°44′18″ N, 072°57′32″ W then north west to position 40°44′30″ N, 072°58′32″ W then north west to position 40°44′33″ N, 072°59′12″ W then north west to position 40°44′41″ N, 072°59′51″ W then north west to position 40°44′46″ N, 073°00′04″ W and then closing the zone at position 40°44′45″ N, 073°00′51″ W (NAD 83).
1.6 Riverfront U.S. Title series Powerboat Race, Hartford, CT.	• Event type: Boat Race. • Date: Labor Day weekend, Friday and Saturday from 10 a.m. until 6 p.m. and Sunday from 12:01 p.m. until 6 p.m. • Location: All water of the Connecticut River, Hartford, CT, between the Founders Bridge on the North approximate position 41°45′53.47″ N, 072°39′55.77″ W and 41°45′37.39″ N, 072°39′47.49″ W (NAD 83) to the South.

■ 3. Remove the following entries in the ''Fireworks Display Table'' in § 100.114 (along with the associated ''Connecticut'' or ''New York'' titles) as follows: 6.2, 7.1, 7.2, 7.4, 7.5, 7.10, 7.11, 7.29, 7.30, 7.31, 7.32, 7.33, 7.35, 7.36, 7.37, 7.39, 7.40, 8.1, 8.3, 8.4, 8.6, 9.3, 9.5, 9.6, 12.4.

■ 4. Remove §§ 100.101, 100.102, 100.105, and 100.106.

■ 5. Remove §§ 100.121, 100.122, and 100.124.

PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 7. Remove § 165.140.

■ 8. Revise § 165.151 to read as follows:

§ 165.151 Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone.

(a) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the fireworks displays, air shows, and swim events listed in Tables 1 and 2 to § 165.151.

(2) These regulations will be enforced for the duration of each event. Notifications will be made to the local maritime community through all appropriate means such as Local Notice to Mariners or Broadcast Notice to Mariners well in advance of the events. If the event does not have a date listed, then exact dates and times of the enforcement period will be announced through a Notice of Enforcement in the **Federal Register.** Mariners should consult the **Federal Register** or their Local Notice to Mariners to remain apprised of schedule or event changes. First Coast Guard District Local Notice to Mariners can be found at *http://www.navcen.uscg.gov/.*

(3) Although listed in the Code of Federal Regulations, sponsors of events listed in Tables 1 and 2 to § 165.151 are still required to submit marine event applications in accordance with 33 CFR 100.15.

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

(1) *Designated representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector Long Island Sound (LIS), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official patrol vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

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

(c) Vessel operators desiring to enter or operate within the regulated areas should contact the COTP at 203–468–4401 (Sector LIS command center) or the designated representative via VHF channel 16 to obtain permission to do so.

(d) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or designated representative.

(e) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(f) The COTP or designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(g) The regulated area for all fireworks displays listed in Table 1 to § 165.151 is that area of navigable waters within a 1000 foot radius of the launch platform or launch site for each fireworks display, unless otherwise noted in Table 1 to § 165.151 or modified in USCG First District Local Notice to Mariners at: *http://www.navcen.uscg.gov/.*

(h) The regulated area for all air shows is the entire geographic area described as the location for that show unless otherwise noted in Table 1 to § 165.151 or modified in USCG First District Local Notice to Mariners at: *http://www.navcen.uscg.gov/.*

(i) Fireworks barges used in these locations will also have a sign on their

port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background. Shore sites used in these locations will display a sign labeled ''FIREWORKS—STAY AWAY'' with the same dimensions. These zones will be enforced from 8:30 p.m. to 10:30 p.m. each day a barge with a ''FIREWORKS—STAY AWAY'' sign on the port and starboard side is on-scene or a ''FIREWORKS—STAY AWAY'' sign is posted in a location listed in Table 1 to § 165.151.

(j) For all swim events listed in Table 2 to § 165.151, vessels not associated with the event shall maintain a separation of at least 100 yards from the participants.

TABLE 1 TO § 165.151

5	May
5.1 Jones Beach Air Show	• Date: The Thursday through Sunday before Memorial Day each May from 9:30 a.m. until 3:30 p.m. each day. • Location: Waters of Atlantic Ocean off of Jones Beach State Park, Wantagh, NY. In approximate positions 40°35′06″ N, 073°32′37″ W, then running east along the shoreline of Jones Beach State Park to approximate position 40°35′49″ N, 073°28′47″ W; then running south to a position in the Atlantic Ocean off of Jones Beach at approximate position 40°35′05″ N, 073°28′34″ W; then running West to approximate position 40°34′23″ N, 073°32′23″ W; then running North to the point of origin. (NAD 83).
6	**June**
6.1 Barnum Festival Fireworks	• Date: last Saturday in June. • Rain Date: following Saturday. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Bridgeport Harbor, Bridgeport, CT in approximate position 41°9′04″ N, 073°12′49″ W (NAD 83).
6.2 Town of Branford Fireworks	• Location: Waters of Branford Harbor, Branford, CT in approximate position, 41°15′30″ N, 072°49′22″ W (NAD 83).
6.3 Vietnam Veterans/Town of East Haven Fireworks.	• Location: Waters off Cosey beach, East Haven, CT in approximate position, 41°14′19″ N, 072°52′09.8″ W (NAD 83).
7	**July**
7.1 Point O'Woods Fire Company Summer Fireworks.	• Location: Waters of the Great South Bay, Point O'Woods, NY in approximate position 40°39′18.57″ N, 073°08′05.73″ W (NAD 83).
7.2 Cancer Center for Kids Fireworks	• Location: Waters off of Bayville, NY in approximate position 40°54′38.20″ N, 073°34′56.88″ W (NAD 83).
7.3 City of Westbrook, CT July Celebration Fireworks.	• Location: Waters of Westbrook Harbor, Westbrook, CT in approximate position, 41°16′10.50″ N, 072°26′14″ W (NAD 83).
7.4 Norwalk Fireworks	• Location: Waters off Calf Pasture Beach, Norwalk, CT in approximate position, 41°04′50″ N, 073°23′22″ W (NAD 83).
7.5 Lawrence Beach Club Fireworks	• Location: Waters of the Atlantic Ocean off Lawrence Beach Club, Atlantic Beach, NY in approximate position 40°34′42.65″ N, 073°42′56.02″ W (NAD 83).
7.6 Sag Harbor Fireworks	• Location: Waters of Sag Harbor Bay off Havens Beach, Sag Harbor, NY in approximate position 41°00′26″ N, 072°17′09″ W (NAD 83).
7.7 South Hampton Fresh Air Home Fireworks.	• Location: Waters of Shinnecock Bay, Southampton, NY in approximate positions, 40°51′48″ N, 072°26′30″ W (NAD 83).
7.8 Westport Police Athletic League Fireworks.	• Location: Waters off Compo Beach, Westport, CT in approximate position, 41°06′15″ N, 073°20′57″ W (NAD 83).
7.9 City of Middletown Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Connecticut River, Middletown Harbor, Middletown, CT in approximate position 41°33′44.47″ N, 072°38′37.88″ W (NAD 83).
7.10 City of New Haven Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of New Haven Harbor, off Long Wharf Park, New Haven, CT in approximate position 41°17′24″ N, 072°54′55.8″ W (NAD 83).
7.11 City of Norwich July Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Thames River, Norwich, CT in approximate position, 41°31′16.84″ N, 072°04′43.33″ W (NAD 83).
7.12 City of Stamford Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Fisher's Westcott Cove, Stamford, CT in approximate position 41°02′09.56″ N, 073°30′57.76″ W (NAD 83).
7.13 City of West Haven Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m.

TABLE 1 TO § 165.151—Continued

	• Location: Waters of New Haven Harbor, off Bradley Point, West Haven, CT in approximate position 41°15′07″ N, 072°57′26″ W (NAD 83).
7.14 CDM Chamber of Commerce Annual Music Fest Fireworks.	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off of Cedar Beach Town Park, Mount Sinai, NY in approximate position 40°57′59.58″ N, 073°01′57.87″ W (NAD 83).
7.15 Davis Park Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Great South Bay, Davis Park, NY in approximate position, 40°41′17″ N, 073°00′20″ W (NAD 83).
7.16 Fairfield Aerial Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Jennings Beach, Fairfield, CT in approximate position 41°08′22″ N, 073°14′02″ W (NAD 83).
7.17 Fund in the Sun Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Great South Bay off The Pines, East Fire Island, NY in approximate position 40°40′07.43″ N, 073°04′13.88″ W. (NAD 83).
7.18 Hartford Riverfest Fireworks	• Date: July 4. • Rain Date: July 5. • Time 9:00 p.m. to 10:30 p.m. • Location: Waters of the Connecticut River off Hartford, CT in approximate position 41°45′21″ N, 072°39′28″ W (NAD 83).
7.19 Independence Day Celebration Fireworks.	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off of Umbrella Beach, Montauk, NY in approximate position 41°01′44″ N, 071°57′13″ W (NAD 83).
7.20 Jones Beach State Park Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off of Jones Beach State Park, Wantagh, NY in approximate position 40°34′56.68″ N, 073°30′31.19″ W (NAD 83).
7.21 Madison Cultural Arts Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Long Island Sound off of Madison, CT in approximate position 41°16′10″ N, 072°36′30″ W (NAD 83).
7.22 Mason's Island Yacht Club Fireworks.	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Fisher's Island Sound, Noank, CT in approximate position 41°19′30.61″ N, 071°57′48.22″ W (NAD 83).
7.23 Patchogue Chamber of Commerce Fireworks.	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Great South Bay, Patchogue, NY in approximate position, 40°44′38″ N, 073°00′33″ W (NAD 83).
7.24 Riverfest Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Connecticut River, Hartford, CT in approximate positions 41°45′39.93″ N, 072°39′49.14″ W (NAD 83).
7.25 Village of Asharoken Fireworks	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Northport Bay, Asharoken, NY in approximate position 41°55′54.04″ N, 073°21′27.97″ W (NAD 83).
7.26 Village of Port Jefferson Fourth of July Celebration Fireworks.	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Port Jefferson Harbor, Port Jefferson, NY in approximate position 40°57′10.11″ N, 073°04′28.01″ W (NAD 83).
7.27 Village of Quoque Foundering Anniversary Fireworks.	• Date: July 4. • Rain date: July 5. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Quantuck Bay, Quoque, NY in approximate position 40°48′42.99″ N, 072°37′20.20″ W (NAD 83).
7.28 City of Long Beach Fireworks	• Location: Waters off Riverside Blvd, City of Long Beach, NY in approximate position 40°34′38.77″ N, 073°39′41.32″ W (NAD 83).

TABLE 1 TO § 165.151—Continued

7.29 Great South Bay Music Festival Fireworks.	• Location: Waters of Great South Bay, off Bay Avenue, Patchogue, NY in approximate position 40°44′45″ N, 073°00′25″ W (NAD 83).
7.30 Mashantucket Pequot Fireworks	• Location: Waters of the Thames River, New London, CT in approximate positions Barge 1, 41°21′03.03″ N, 072°5′24.5″ W, Barge 2, 41°20′51.75″ N, 072°5′18.90″ W (NAD 83).
7.31 Shelter Island Fireworks	• Location: Waters of Gardiner Bay, Shelter Island, NY in approximate position 41°04′39.11″ N, 072°22′01.07″ W (NAD 83).
7.32 Thames River Fireworks	• Location: Waters of the Thames River off the Electric Boat Company, Groton, CT in approximate position 41°20′38.75″ N, 072°05′12.22″ W (NAD 83).
7.33 Clam Shell Foundation Fireworks ..	• Location: Waters of Three Mile Harbor, East Hampton, NY in approximate position 41°1′15.49″ N, 072°11′27.50″ W (NAD 83).
7.34 Town of North Hempstead Bar Beach Fireworks.	• Location: Waters of Hempstead Harbor, North Hempstead, NY in approximate position 40°49′54″ N, 073°39′14″ W (NAD 83).
7.35 Groton Long Point Yacht Club Fireworks.	• Location: Waters of Long Island Sound, Groton, CT in approximate position 41°18′05″ N, 072°02′08″ W (NAD 83).
8	August
8.1 Pyro-FX Entertainment Group Fireworks.	• Location: Waters of the Connecticut River off Chester, CT in approximate position 41°24′40.76″ N, 072°25′32.65″ W (NAD 83).
8.2 Port Washington Sons of Italy Fireworks.	• Location: Waters of Hempstead Harbor off Bar Beach, North Hempstead, NY in approximate position 40°49′48.04″ N, 073°39′24.32″ W (NAD 83).
8.3 Village of Bellport Fireworks	• Location: Waters of Bellport Bay, off Bellport Dock, Bellport, NY in approximate position 40°45′01.83″ N, 072°55′50.43″ W (NAD 83).
8.4 Taste of Italy Fireworks	• Location: Waters of Norwich Harbor, off Norwich Marina, Norwich, CT in approximate position 41°31′17.72″ N, 072°04′43.41″ W (NAD 83).
8.5 Old Black Point Beach Association Fireworks.	• Location: Waters off Old Black Point Beach, East Lyme, CT in approximate position 41°17′34.9″ N, 072°12′55″ W (NAD 83).
8.6 Town of Babylon Fireworks	• Location: Waters off of Cedar Beach Town Park, Babylon, NY in approximate position 40°37′53″ N, 073°20′12″ W (NAD 83).
9	September
9.1 East Hampton Fire Department Fireworks.	• Location: Waters off Main Beach, East Hampton, NY in approximate position 40°56′40.28″ N, 072°11′21.26″ W (NAD 83).
9.2 Town of Islip Labor Day Fireworks ..	• Location: Waters of Great South Bay off Bay Shore Marina, Islip, NY in approximate position 40°42′24″ N, 073°14′24″ W (NAD 83).
9.3 Village of Island Park Labor Day Celebration Fireworks.	• Location: Waters off Village of Island Park Fishing Pier, Village Beach, NY in approximate position 40°36′30.95″ N, 073°39′22.23″ W (NAD 83).

TABLE 2 TO § 165.151

1.1 Swim Across the Sound	• Location: Waters of Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT in approximate positions 40°58′11.71″ N 073°05′51.12″ W, north-westerly to the finishing point at Captain's Cove Seaport 41°09′25.07″ N 073°12′47.82″ W (NAD 83).
1.2 Huntington Bay Open Water Championships Swim.	• Location: Waters of Huntington Bay, NY. In approximate positions start/finish at approximate position 40°54′25.8″ N 073°24′28.8″ W, East turn at approximate position 40°54′45″ N 073°23′36.6″ W and a West turn at approximate position 40°54′31.2″ N 073°25′21″ W. °09′25.07″ N 073°12′47.82″ W (NAD 83).
1.3 Maggie Fischer Memorial Great South Bay Cross Bay Swim.	• Location: Waters of the Great South Bay, NY. Starting Point at the Fire Island Lighthouse Dock in approximate position 40°38′01″ N 073°13′07″ W, northerly through approximate points 40°38′52″ N 073°13′09″ W, 40°39′40″ N 073°13′30″ W, 40°40′30″ N 073°14′00″ W, and finishing at Gilbert Park, Brightwaters, NY at approximate position 40°42′25″ N 073°14′52″ W (NAD 83).

■ 9. Remove § 165.152.

■ 10. Revise § 165.154 to read as follows:

§ 165.154 Safety and Security Zones; Captain of the Port Long Island Sound Zone Safety and Security Zones.

The following areas are designated safety and security zones:

(a) *Security zones.*

(1) Dominion Millstone Nuclear Power Plant, Waterford, CT.

(i) All navigable waters of Long Island Sound, from surface to bottom, North and Northeast of a line running from Bay Point, at approximate position 41°18′34.20″ N, 072°10′24.60″ W, to Millstone Point at approximate position 41°18′15.00″ N, 072°9′57.60″ W (NAD 83).

(ii) All navigable waters of Long Island Sound, from surface to bottom, West of a line starting at 41°18′42″ N, 072°09′39″ W, running south to the Eastern most point of Fox Island at approximate position 41°18′24.11″ N, 072°09′39.73″ W (NAD 83).

(2) Electric Boat Shipyard, Groton, CT.

(i) Location. All navigable waters of the Thames River, from surface to bottom, West of the Electric Boat Corporation Shipyard enclosed by a line beginning at a point on the shoreline at 41°20′16″N, 72°04′47″ W; then running West to 41°20′16″ N, 72°04′57″ W; then running North to 41°20′26″ N, 72°04′57″ W; then Northwest to 41°20′28.7″ N, 72°05′01.7″ W; then North-Northwest to 41°20′53.3″ N, 72°05′04.8″ W; then North-Northeast to 41°21′02.9″ N, 72°05′04.9″ W; then East to a point on shore at 41°21′02.9″ N, 72°04′58.2″ W (NAD 83).

(ii) Application. Sections 165.33(a), (e), (f) shall not apply to public vessels or to vessels owned by, under hire to, or performing work for the Electric Boat

Division when operating in the security zone.

(3) Naval Submarine Base, Groton, CT. All navigable waters of the Thames River, from surface to bottom, West of the Groton Naval Submarine Base New London, enclosed by a line beginning at a point on the shoreline at 41°23′15.8″ N, 72°05′17.9″ W; then to 41°23′15.8″ N, 72°05′22″ W; then to 41°23′25.9″ N, 72°05′29.9″ W; then to 41°23′33.8″ N, 72°05′34.7″ W; then to 41°23′37.0″ N, 72°05′38.0″ W; then to 41°23′41.0″ N, 72°05′40.3″ W; then to 41°23′47.2″ N, 72°05′42.3″ W; then to 41°23′53.8″ N, 72°05′43.7″ W; then to 41°23′59.8″ N, 72°05′43.0″ W; then to 41°24′12.4″ N, 72°05′43.2″ W; then to a point on the shoreline at 41°24′14.4″ N, 72°05′38″ W; then along the shoreline to the point of beginning (NAD 83).

(4) U.S. Coast Guard Academy, New London, CT.

(i) Location. All navigable waters of the Thames River, from surface to bottom, in a 500-yard radius from Jacobs Rock, approximate position 41°22′22″ N, 072°05′40″ W (NAD 83).

(ii) Enforcement period. This rule will be enforced during visits by high-ranking officials and times of heighted security.

(iii) Notification. The Captain of the Port will notify the maritime community of periods during which this security zone will be enforced by all appropriate means such as Local Notice to Mariners, Marine Safety Information Radio Broadcasts or on scene notice.

(5) U.S. Coast Guard Vessels, Long Island Sound COTP Zone. All navigable waters within a 100-yard radius of any anchored U.S. Coast Guard vessel. For the purposes of this section, U.S. Coast Guard vessels includes any commissioned vessel or small boat in the service of the regular U.S. Coast Guard and does not include Coast Guard Auxiliary vessels.

(b) *Safety zones.*

(1) Coast Guard Station Fire Island, Long Island, NY. All waters of Fire Island Inlet from the shore out to a line beginning at a point on shore at 40°37′31.4″ N, 073°15′41.1″ W; then North to 40°37′35.6″ N, 073°15′43.1″ W; then East to 40°37′36.7″ N, 073°15′39.8″ W; then East to 40°37′37.8″ N, 073°15′36.6″ W; then East to 40°37′41.1″ N, 073°15′33.5″ W; then Southeast to 40°37′39.7″ N, 073°15′27.0″ W; then Southeast to 40°37′37.5″ N, 073°15′22.1″ W; then Southeast to 40°37′37.6″ N, 073°15′19.1″ W; then Southeast to point on shore at 40°37′33.9″ N, 073°15′20.8″ W (NAD 83).

(c) *Regulations.*

(1) The general regulations contained in § 165.23 and § 165.33 of this part apply. Entering into, remaining within or cause an article or thing to enter into or remain within these safety and security zones is prohibited unless authorized by the Captain of the Port or a designated representative.

(2) These safety and security zones are closed to all vessel traffic, except as may be permitted by the Captain of the Port (COTP) or a designated representative. Vessel operators given permission to enter or operate in the security zones must comply with all directions given to them by the COTP or the designated representative.

(3) The ''designated representative'' is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his/her behalf. The on-scene representative may be on a Coast Guard vessel, a state or local law enforcement vessel, or other designated craft, or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(4) Vessel operators desiring to enter or operate within the security zones shall request permission to do so by contacting the Captain of the Port Sector Long Island Sound at 203–468–4401, or via VHF Channel 16.

■ 11. Remove § 165.155.

■ 12. Remove §§ 165.158 and 165.159.

Dated: January 25, 2012.

J.M. Vojvodich,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2012–2899 Filed 2–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0060]

Drawbridge Operation Regulation; Oakland Inner Harbor, Oakland, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Fruitvale Avenue Drawbridge across Oakland Inner Harbor, mile 5.6, between the cities of Alameda and Oakland, Alameda County, CA. The deviation is necessary to allow the County of Alameda Public Works Agency to perform seismic retrofitting on the drawbridge. This deviation allows the bridge owner to secure the drawspan in the closed-to-navigation position during the project.

DATES: This deviation is effective from 12:01 a.m., February 13, 2012 to 11:59 p.m. on February 24, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2012–0060 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0060 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone (510) 437–3516, email *David.H.Sulouff@uscg.mil* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The County of Alameda Public Works Agency has requested a temporary change to the operation of the Fruitvale Avenue Drawbridge, mile 5.61, over Oakland Inner Harbor, between the cities of Alameda and Oakland, Alameda County, CA. The drawbridge navigation span provides a vertical clearance of 15 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal; except that, from 8 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels. However, the draw shall open during the above closed periods for vessels which must, for reasons of safety, move on a tide or slack water, if at least two hours notice is given, as required by 33 CFR 117.181. Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position for seismic retrofitting from 12:01 a.m., February 13, 2012 to 11:59 p.m. on February 24, 2012. At all other times, the drawspan will promptly return to normal operation. This temporary deviation has been coordinated with waterway users.

No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 27, 2012.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2012–3102 Filed 2–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0006]

Drawbridge Operation Regulations; Merrimack River, Amesbury, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the 1st Lt. Derek S. Hines Memorial Bridge, mile 5.8, across the Merrimack River at Amesbury (Newburyport), Massachusetts. The deviation is necessary to facilitate bridge rehabilitation and repairs. This deviation allows the bridge to remain in the closed position for four months.

DATES: This deviation is effective from February 13, 2012 through May 11, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0006 and are available online at *www.regulations.gov*, inserting USCG–2012–0006 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Joe Arca, Project Officer, First Coast Guard District, *joe.m.arca@uscg.mil* or telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The 1st Lt. Derek S. Hines Memorial Bridge, across the Merrimack River, mile 5.8, at Amesbury (Newburyport), Massachusetts, has a vertical clearance in the closed position of 13 feet at mean high water and 20 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.605(c).

The owner of the bridge, Massachusetts Department of Transportation, requested a temporary deviation from the regulations to facilitate bridge rehabilitation repairs, replacement of operating machinery, structural steel, and highway deck on the swing span.

Under this temporary deviation the bridge may remain in the closed position from February 13, 2012 through May 11, 2012.

The bridge rarely opens during the time period this temporary deviation will be in effect. In addition, mariners may use an alternate channel to the south under the Chain Bridge, which is a fixed highway bridge that provides 28 feet of vertical clearance at mean high water and 35 feet of vertical clearance at mean low water.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 1, 2012.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2012–3101 Filed 2–9–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0623; FRL–9628–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Preconstruction Permitting Requirements for Electric Generating Stations in Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting limited approval of a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE). This SIP revision revises and supplements the Maryland SIP by adding the preconstruction permitting requirements for electric generating stations that are required to receive a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Service Commission (PSC) before commencing construction or modification. The SIP revision also requires electric generating stations to obtain a preconstruction permit from MDE when a CPCN is not required under the PSC regulations and statutes. EPA is granting limited approval of these revisions to Maryland's preconstruction program for electric generating stations in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on March 12, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0623. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submission are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The PSC is an agent of the State of Maryland and is an independent unit in the Executive Branch of the government of the State of Maryland. The PSC regulates public utilities including electric generating stations owned by electric companies doing business in Maryland and is empowered by the State of Maryland to issue CPCNs

for the construction and modification of electric generating stations. On August 4, 2011 (76 FR 47090), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of changes to the Code of Maryland Administrative Regulations (COMAR), specifically the MDE regulations at COMAR 26.11.02.09 and 26.11.02.10. The NPR also proposed to approve into the Maryland SIP for first time the following: (1) Maryland statutory provisions at Md. Code Ann., Public Utilities Cos. sections 7–205 (2006), 7–207 (2007), 7–207.1 (2007) and 7–208 (2001); and (2) PSC regulations at COMAR 20.79.01.01; 20.79.01.02; 20.79.01.06; 20.79.01.07; 20.79.02.01; 20.79.02.02; 20.79.02.03; 20.79.03.01; and 20.79.03.02. The formal SIP revision (#11–01) was submitted by MDE on May 13, 2011. EPA initially proposed full approval of the submission.

However, in response to comments received on that proposal, a portion of the submission has been withdrawn by MDE. On December 20, 2011, MDE withdrew COMAR 20.79.01.07 (regarding the PSC's waiver authority for CPCNs) from its Maryland SIP revision submission. EPA is now granting limited approval of the remainder of the MDE SIP submission for electric generating stations which includes COMAR 26.11.02.09 and 26.11.02.10, applicable parts of sections 7–205, 7–207, 7–207.1 and 7–208 of the Md. Code Ann., and applicable parts of COMAR 20.79.01.01; 20.79.01.02; 20.79.01.06; 20.79.02.01; 20.79.02.02; 20.79.02.03; 20.79.03.01; and 20.79.03.02. See Sections III, IV and V below for more detail.

In our August 4, 2011 notice of proposed rulemaking, EPA proposed to include a July 15, 2011 letter from the Secretary of MDE in the Maryland SIP. Because MDE's July 15, 2011 letter addressed COMAR 20.79.01.07 which MDE has subsequently withdrawn from our consideration, EPA is not including the July 15, 2011 Letter in our limited approval of the May 13, 2011 Maryland SIP submission (as amended on December 20, 2011).

II. Summary of SIP Revision

Under the CAA, major stationary sources of air pollution are required to obtain a permit to construct prior to commencing construction or modification activities. The Maryland statutory provisions at sections 7–205, 7–207, 7–207.1, and 7–208 of the Md. Code Ann. and the PSC's regulations identified above require electric generating stations in Maryland to obtain a CPCN from the PSC prior to construction or modification activities which would require a permit under the CAA. The CPCNs serve as the mechanism for the State to implement Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) requirements for electric generating stations in Maryland. EPA is limitedly approving Maryland's SIP revision request to add the statutory and regulatory requirements that require electric generating stations to obtain a CPCN prior to construction or modification. These requirements were not previously in the Maryland SIP; therefore, our limited approval corrects deficiencies in the Maryland SIP and strengthens the SIP.

Previously, the Maryland SIP at COMAR 26.11.02.09 and 26.11.02.10 exempted electric generating stations constructed or modified by electric generating companies from MDE's permitting regulations. However, the State of Maryland has since modified Md. Code Ann., Environment Section 2–402(3) and COMAR 26.11.02.09 and 26.11.02.10 so that electric generating stations that are not required to obtain CPCNs from the PSC remain subject to MDE's preconstruction permitting requirements. Therefore, the SIP regulations were inconsistent with Maryland's present statutory and regulatory provisions in that they do not preserve MDE's permitting authority for electric generating stations that are not required otherwise to obtain a CPCN. MDE's May 13, 2011 SIP revision request included the amended MDE regulations, COMAR 26.11.02.09 and 26.11.02.10. Our limited approval of the May 13, 2011 SIP revision request, as amended on December 20, 2011, eliminates the inconsistency between the Maryland SIP and Maryland's present statutory and regulatory provisions regarding MDE's ability to permit electric generating stations when the electric generating stations do not receive CPCNs.

Section 110(a)(2)(C) of the CAA, 42 U.S.C. section 7410(a)(2)(C), requires the state SIP to have a program for regulation of construction and modification of stationary sources to assure that national ambient air quality standards (NAAQS) are achieved, including a permit program as required by Part C of Title I of the CAA for PSD and Part D of Title I of the CAA for NSR. Our limited approval of Maryland's SIP revision of May 13, 2011, as amended on December 20, 2011, ensures that the Maryland SIP has a permit program for the construction and modification of electric generating stations as required by Parts C and D of Title I of the CAA and ensures that the SIP provides for the attainment and maintenance of the NAAQS. Included in the May 13, 2011 proposed SIP revision is section 7–208(f) of the Md. Code Ann. which specifically requires the PSC to include in CPCNs the requirements of federal and state environmental laws and standards as identified by MDE. EPA's limited approval ensures the Maryland SIP is adequate to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable as required by sections 110(a) and 161 of the CAA, 42 U.S.C. sections 7410(a) and 7471, and 40 CFR 51.166. EPA's limited approval of the Maryland permitting program for electric generating stations also ensures that the Maryland SIP meets plan requirements for nonattainment areas as required by Part D of Title I of the CAA. Because the provisions in the May 13, 2011 SIP submission, as amended on December 20, 2011, strengthen the Maryland SIP, EPA limitedly approves them into the Maryland SIP.

III. Limited Approval

Why is EPA granting only ''Limited Approval'' of Maryland's preconstruction program for electric generating stations for the Maryland SIP?

In general, EPA has determined that MDE's May 13, 2011 submission (#11–01), as amended by MDE's December 20, 2011 letter removing COMAR 20.79.01.07, strengthens Maryland's SIP by containing a permit program as required by Parts C and D of Title I of the CAA. However, we acknowledge that for the reasons stated below, the May 13, 2011 submission (as amended on December 20, 2011) does not fully meet all CAA requirements for SIPs. Therefore, EPA is granting limited approval in accordance with section 110(k) of the CAA, 42 U.S.C. section 7410(k).

A. Completeness Determinations

The May 13, 2011 Maryland SIP submission, as amended December 20, 2011, does not contain a requirement for the PSC to conduct completeness determinations for CPCN applications. Pursuant to 40 CFR 51.166(q)(1), a state SIP must require the permitting authority ''to notify all applicants within a specified time period as to the completeness of the application or any deficiency in the application or information submitted.'' *See* 40 CFR 51.166(q)(1). However, as discussed more thoroughly in EPA's Response to Comments in Section IV below, we believe the PSC is complying with this requirement in its practice for issuing

CPCNs such that the impact on CPCN applicants is minimized.

B. Permit Documents in One Location for Public Access

The May 13, 2011 Maryland SIP submission, as amended December 20, 2011, does not contain a requirement for the PSC to make available for public inspection in one location the documents from a CPCN applicant and the reviewing agency's analysis of the effect on air quality from the proposed construction or modification at an electric generating station. Pursuant to 40 CFR 51.161(a) and (b)(1), a state SIP shall provide for the ''[a]vailability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the State or local agency's analysis of the effect on air quality.'' *See* 40 CFR 51.161(a) and (b)(1). As discussed more thoroughly in EPA's Response to Comments in Section IV below, EPA believes the PSC provides in its practice the opportunity for public review of this information through the availability of such documents on its Web site. Therefore, the impact on the public's opportunity to comment meaningfully is minimized. When the PSC amends its regulations to include the requirements of 40 CFR 51.161(a) and (b)(1) and 51.166(q)(1), MDE may submit the revised regulations for EPA's consideration for full approval of the permitting program for electric generating stations in the Maryland SIP.

IV. EPA's Response to Comments Received on the Proposed Action

EPA received a single set of relevant comments on its August 4, 2011 (76 FR 47090) proposed action to approve revisions to the Maryland SIP. These comments, provided by the Environmental Integrity Project (hereinafter referred to as ''the Commenter''), raised concerns with regard to EPA's August 4, 2011 proposed action. A full set of these comments is provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

Generally, the Commenter raised four areas of concern. First, the Commenter asserts that the proposed revision to the Maryland SIP does not require compliance with NSR requirements in the CAA. Second, the Commenter asserts the proposed revision to the Maryland SIP allows the PSC, the air permitting agency for electric generating stations in Maryland, to waive or modify regulatory requirements. Third, the Commenter asserts the proposed Maryland SIP revision does not meet minimum requirements in the CAA for public participation, does not protect the public's right to review and comment on draft permits, and does not require the PSC to respond to comments. Finally, the Commenter asserts the proposed Maryland SIP revision does not contain formal requirements for completeness determinations. EPA's response to these four comments is provided below.

Comment 1: The Commenter asserts the proposed revision to the Maryland SIP ''does not clearly and unambiguously mandate compliance with New Source Review standards under the Clean Air Act.'' The Commenter cites to section 110(a)(2)(C) of the CAA, 42 U.S.C. section 7410(a)(2)(C), which requires SIPs to include a permit program as required by parts C and D of the CAA for PSD and NSR. The Commenter also cites to 40 CFR 51.166(j) which includes requirements that SIPs provide certain requirements, including, but not limited to, requirements that major stationary sources or major modifications meet applicable emission limitations under 40 CFR parts 60 and 61 and apply best available control technology (BACT) for each regulated NSR pollutant they would have the potential to emit in significant amounts or for each regulated NSR pollutant for which there is a significant net emissions increase. The Commenter cites to 40 CFR 51.166(a)(1)(7)(ii) (requiring each SIP to incorporate requirements of 40 CFR 51.166(j)–(r)) and to section 165(a)(2) of the CAA, 42 U.S.C. section 7475(a)(2), which requires major emitting facilities to receive permits prior to construction.

Response 1: EPA does not agree with the Commenter that the Maryland SIP revision does not meet the above requirements. Section 110(a)(2)(C) of the CAA, 42 U.S.C. section 7410(a)(2)(C), requires each SIP to include a permits program as required in parts C and D of the CAA (42 U.S.C. sections 7470–7492 and 7501–7515). 40 CFR 51.166 provides further details on the requirements for the permits programs. EPA believes the statutory and regulatory requirements in the May 13, 2011 Maryland SIP submission, as amended December 20, 2011, fulfill the requirements of section 110(a)(2)(C) and 165(a)(2) of the CAA and 40 CFR 51.166.

Pursuant to Md. Code Ann., Public Utilities Cos. sections 7–205 and 7–207, electric generating stations may not be modified or constructed without receiving prior approvals from the PSC through the PSC's issuance of a permit which is known as a CPCN. Section 7–207 requires electric generating stations to obtain CPCNs from the PSC prior to construction. Section 7–205 requires electric generating stations to obtain approval from the PSC prior to commencing a modification to the generating station. ''Approval'' as used in the Maryland statutory provision (section 7–205) means a CPCN issued pursuant to sections 7–207 and 7–208. *See* COMAR 20.79.01.02(4). The Maryland statutory provisions in sections 7–207 and 7–208 which EPA proposed to include in the Maryland SIP contain specific requirements for the issuance of CPCNs. In particular, section 7–208(f)(1) states that the PSC shall include in each certificate it issues ''(i) the requirements of the federal and State environmental laws and standards that are identified by the Department of the Environment; and (ii) the methods and conditions that the Commission determines are appropriate to comply with those environmental laws and standards.'' Section 7–208(f)(2) provides that the PSC ''may not adopt any method or condition under paragraph (1)(ii) of this subsection that the Department of the Environment determines is inconsistent with federal and State environmental laws and standards.''

The Maryland regulatory provisions EPA is limitedly approving in the SIP revision further fulfill the Clean Air Act requirements for SIPs. COMAR 20.79.03.02 contains the requirements for applications for CPCNs and requires applicants for CPCNs to include in CPCN applications a description of the effect on air quality including the ability of the applicant to comply with PSD and NSR provisions, a description of the impact on PSD areas and nonattainment areas, and all information and forms required by MDE regulations for permits to construct and operating permits under COMAR 26.11. Further, COMAR 20.79.01 contains additional requirements for electric generating stations applying for CPCNs including requirements for when modifications need CPCNs.

EPA disagrees with the Commenter's claim that the Maryland SIP revision does not meet the requirements of 40 CFR 51.166. EPA believes the revision meets 40 CFR 51.166 through the statutory and regulatory requirements identified above. As previously discussed, COMAR 20.79.03.02 requires CPCN applicants to identify relevant requirements of the CAA. Section 7–208(f) requires inclusion of federal environmental laws and standards identified by MDE which is the Maryland environmental agency which implements PSD and NSR as well as all requirements of the CAA for all sources in Maryland except electric generating

stations. Because the Maryland SIP as implemented through MDE requires sources to apply BACT or Lowest Achievable Emissions Rate at COMAR 26.11.06.14 and 26.11.17, because CPCN applicants identify requirements of the CAA needed for construction or modification projects, and because the emissions standards and standards of performance under 40 CFR Parts 60 and 61 would be identified by MDE through section 7–208(f), EPA believes the Maryland SIP revision meets the requirements of 40 CFR 51.166 as specifically identified by the Commenter, except as discussed below regarding 40 CFR 51.161(b)(1) and 51.166(q)(1) (relating to availability of permit documents and completeness determinations).

EPA believes that the statutory provisions in sections 7–205, 7–207, and 7–208 and the regulatory provisions in COMAR 20.79 contain the required and necessary permits program for PSD and NSR as required in sections 110(a)(2)(C) and 165(a)(2) of the CAA, 42 U.S.C. sections 7410(a)(2)(C) and 7475(a)(2), and by 40 CFR 51.166. The Maryland provisions included in the SIP revision require CPCNs prior to construction or modification of electric generating stations. *See* sections 7–205, 7–207, and 7–208. In addition, section 7–208(f) specifically requires the PSC to include in CPCNs federal environmental requirements identified by MDE. MDE implements the SIP approved PSD and NSR permit program for sources other than electric generating stations in Maryland through COMAR 26.11.06.14 and 26.11.17.

Comment 2: The Commenter asserts the proposed revisions to the Maryland SIP contain a provision which allows the PSC authority to waive CAA requirements in COMAR 20.79. *See* COMAR 20.79.01.07. The Commenter asserts that the CAA requires a SIP to unambiguously require an applicant for a CPCN to comply with NSR requirements such as BACT. The Commenter asserts that the PSC has ''extremely broad authority to waive or modify any of the regulatory provisions in Title 20, Subchapter 79, which governs the CPCN application process.'' The Commenter asserts that the letter submitted by the Secretary of MDE to the Regional Administrator of EPA Region III on July 15, 2011 stating that MDE would ensure that the PSC does not issue waivers or modifications not in compliance with the CAA and federal regulations was not sufficient to serve as a binding requirement on the state to ensure CPCN applicants comply with NSR requirements. The Commenter asserts that section 7–208(f) is insufficient to show that NSR requirements will be included in all CPCNs because section 7–208 ''appears to apply only to the construction of an EGU when either (1) associated overhead transmission lines designed to carry a voltage in excess of 69,000 volts are also being constructed; or (2) the entity constructing the EGU is exercising the right of condemnation in connection therewith.'' *See* section 7–208(a).

Response 2: EPA notes that in a December 20, 2011 letter from Robert M. Summers, Secretary of MDE, to Shawn M. Garvin, Regional Administrator, EPA Region III, MDE officially withdrew COMAR 20.79.01.07 from MDE's proposal for inclusion in the Maryland SIP. In taking final action on Maryland's proposed SIP revision, EPA is acting on the remaining statutes and regulations submitted by Maryland. Therefore, EPA's limited approval of the PSC permitting program for electric generating stations does not include COMAR 20.79.01.07 and that provision is not included in the Maryland SIP.

Nevertheless, EPA disagrees with the Commenter in general on the waiver issue and believes the Letter from Robert M. Summers, Secretary of MDE, to Shawn M. Garvin, Regional Administrator, EPA Region III (July 15, 2011) provides assurances that MDE will ensure that its sister Maryland agency, the PSC, will include all necessary PSD and NSR requirements as required by section 7–208(f). EPA believes that the PSC's waiver authority in COMAR 20.79.01.07 is clearly restricted by the statutory restraint on the PSC's CPCN authority in section 7–208(f) which provides that the PSC *shall* include federal environmental laws and standards identified by MDE in CPCNs. This statutory restraint is clearly evident from the plain language of the statute. The July 15, 2011 Letter from Robert M. Summers to EPA confirms the statutory limitation on the PSC's waiver authority. EPA has given considerable weight to the Summers' July 15, 2011 letter because MDE has expertise in interpreting Maryland law. Presently, EPA has no reason to believe the PSC will exercise its waiver authority to issue CPCN's without environmental requirements identified by MDE contrary to section 7–208(f). In addition, as of December 20, 2011, the PSC's waiver authority in COMAR 20.79.01.07 was removed from Maryland's proposed SIP revision and is therefore not included in EPA's limited approval of the Maryland permitting program for electric generating stations. Therefore, EPA believes the Maryland SIP revision meets the requirements of the CAA for the limited approval.

Additionally, EPA disagrees with the Commenter that section 7–208 does not apply to the construction and modification of all electric generating stations in Maryland. EPA believes the Commenter's assertion is contrary to established Maryland case law. Section 7–207 was originally codified as Maryland Ann. Code, Article 78, section 54A (1968), and section 7–208 was previously codified as Maryland Ann. Code, Article 78, section 54B (1971). In *Baltimore Gas & Electric Co.* v. *Dept. of Health & Mental Hygiene,* 284 Md. 216, 225–26 (1979), the Maryland Court of Appeals interpreted Maryland Ann. Code, Article 78, sections 54A and 54B as providing a comprehensive plan for the erection of new power plants. The Maryland Court of Appeals stated section 54A prohibited construction of a generating station *or* overhead transmission line without first obtaining a CPCN and also found that section 54B (the predecessor of Md. Ann. Code, Public Utilities Co. section 7–208) simply provided the procedures for obtaining a CPCN under section 54A (now codified as section 7–207). *Id.* Likewise, today, section 7–207 requires CPCNs prior to construction of electric generating stations, and section 7–208 provides the detailed requirements for those CPCNs.

Further, COMAR 20.79.01.02(B)(4) clearly confirms that CPCNs issued for modification projects would be CPCNs issued pursuant to requirements in sections 7–207 and 7–208. Because Maryland case law found that Maryland Ann. Code, Article 78, sections 54A and 54B (now codified as sections 7–207 and 7–208) apply to construction of electrical generating stations *or* transmission lines and because the Maryland regulations included in the SIP revision state that section 7–208 applies also to modifications, EPA does not believe the Commenter's assertion is valid or a correct interpretation of Maryland law.

Comment 3: The Commenter asserts the proposed Maryland SIP revisions do not meet minimum standards for public participation set forth in the CAA and do not protect the public's right to review and comment on a draft CPCN. The Commenter also states the PSC does not allow for sufficient time for response to public comments. The Commenter asserts the proposed SIP revision does not contain a formal process for ensuring the PSC responds to comments and asserts the letter from H. Robert Erwin, Jr., General Counsel, PSC, to Robert M. Summers, Secretary, MDE (January 25, 2011) is inadequate to

establish an independent obligation under the SIP on the PSC to respond to comments during the CPCN permitting process. The Commenter asserts that the CAA requires a public hearing and an opportunity for public comment during the NSR permit process and that the permitting agency must make available to the public information submitted by the owner or operator of the applicant as well as the permit agency's analysis of the effect on air quality and the draft approval in at least one location. *See* 40 CFR 51.161(a), 51.161(b), and 51.166(q). The Commenter states the SIP must provide at least 30 days for public comments. 40 CFR 51.161(b)(2). The Commenter asserts that the Md. Code Ann., Pub. Util. Cos. section 7–207(d) and related regulations do not meet these requirements.

Response 3: EPA agrees with the Commenter that the CAA does require public participation in NSR permitting, including the right to review documents. However, EPA disagrees with the Commenter regarding the proposed Maryland SIP revision because EPA believes the Maryland SIP revision meets the requirements of the CAA for public participation with the exception of the requirement for the SIP to require the permitting agency to make available to the public in at least one location information submitted by the owner or operator of the applicant as well as the permit agency's analysis of the effect on air quality and the draft approval. *See* 40 CFR 51.161(a) and (b)(1).

Sections 7–207(c) and (d) and 7–208(d) contain the CAA's public participation requirements for SIPs. As discussed above, sections 7–207 and 7–208 apply to CPCNs for construction as well as for modification of electric generating stations. Section 7–207(c) and (d) require the PSC to provide notice of an application for a CPCN to all interested persons, to provide an opportunity for public comment, and to hold a public hearing on the CPCN application. Section 7–207(d) also requires weekly notice of the public hearing and opportunity for comment in a newspaper of general circulation in the four weeks prior to a hearing. Section 7–208(d) requires the PSC to provide notice to all interested persons upon receipt of an application for a CPCN and to hold a public hearing as required by section 7–207 upon publication of proper notice.

However, EPA agrees with the Commenter that a SIP must require the permitting agency to make available to the public in at least one location information submitted by the permit applicant as well as the permit agency's analysis of the effect on air quality and the draft approval. *See* 40 CFR 51.161(a) and (b)(1). As explained in this rulemaking, EPA is granting limited approval to the Maryland SIP revision until such time as MDE submits a statutory or regulatory requirement that meets the requirements of 40 CFR 51.161(a) and (b)(1). EPA is granting this limited approval to the Maryland SIP revision because EPA believes the PSC in practice is providing the public with full access to the public information submitted by a CPCN applicant as well as the PSC's and MDE's analysis of the effect on air quality from an application. All public records relevant to a CPCN application and the PSC's official actions on those applications are available to the public for review and download through access to the PSC's publicly available Web page at *http://www.psc.state.md.us/.* The purpose of providing an opportunity for public review is served by this method of availability such that EPA is granting a limited approval until the PSC and MDE include such a requirement in a request for SIP revision.

In addition, we gain additional assurance that the public will have available for inspection information submitted by a CPCN applicant and associated PSC analyses through the PSC's statutory obligation to comply with the Maryland Public Information Act, Md. Code Ann., State Government sections 10–611 to 10–630. The Maryland Public Information Act applies to all branches of the Maryland state government and provides persons the right to review the available records that are disclosable by the State and the right to obtain copies of those records. This statute provides that all persons are entitled to access to information about the affairs of government and the official acts of public officials and employees. *See* Maryland Public Information Act, section 10–612(a). The Maryland Public Information Act permits persons to inspect public records at any reasonable time within thirty days of a request and provides a process for persons to challenge the withholding of public documents. *See* Maryland Public Information Act, sections 10–614 and 10–623.

EPA believes these statutory obligations as well as the practice of making documents publicly available over the PSC's Web page meet the intent of the requirements for SIPs in the CAA and in the regulations at 40 CFR 51.161 and 51.166. Hence, EPA is granting limited approval to this SIP revision until such time as Maryland submits a statutory or regulatory requirement meeting 40 CFR 51.161(a) and (b)(1).

The Commenter also addressed the PSC's obligations to respond to public comments. In reviewing SIPs submitted for approval, EPA must follow the requirements in section 110 of the CAA and in 40 CFR 51.161 and 51.166. The Maryland SIP revision meets these requirements. As discussed above, EPA believes the Maryland SIP revision provides for public hearings for CPCNs and an opportunity for public comment as required by section 165(a)(2) of the CAA and 40 CFR 51.161. The PSC in its practice makes available to the public all information including the CPCN application as required by 40 CFR 51.161(a) and (b) and 51.166(q) through complying with Md. Code Ann., Public Utilities Cos. sections 7–207 and 7–208 and complying with its statutory mandate in the Maryland Public Information Law. In addition, the PSC provides further public access to documents relevant to CPCN obligations via its publically-available docket on the PSC's Web site. While the Maryland Public Information Law and the PSC's Web site are not included in the SIP revision, EPA believes that the PSC is obligated to act in accordance with these obligations and that the PSC's practice in using the Web site strengthens public participation.

If these public access provisions and policies were to be repealed or substantially changed, EPA would reevaluate the limited approval of the SIP revision.

EPA reviews SIPs for their compliance with requirements in the CAA and in the implementing regulations. EPA agrees with the Commenter that responding to comments is essential to ensuring adequate public participation. However, EPA disagrees with the Commenter that the Maryland provisions for electric generating stations are not SIP approvable. EPA has previously stated that adequate public participation and comment requires air permitting agencies to address and respond to public comment. *See In the Matter of Onyx Environmental Services,* Petition V–2005–1 at 7 (February 1, 2006) (citing *Home Box Office* v. *FCC,* 567 F.2d 9, 35 (DC Cir. 1977) (stating ''the opportunity to comment is meaningless unless the agency responds to significant points raised by the public''). *See also In the Matter of Citgo Refining and Chemicals Co. L.P.,* Petition VI–2007–01 at 7 (May 28, 2009) (stating permitting authorities have a responsibility to respond to significant comments); *In the Matter of Kerr-McGee Gathering, LLC,* Petition VIII–2007 at 4; *In the Matter of Wheelabrator, Baltimore L.P.,* Permit 24–510–01–886 at 7 (April 14, 2010).

EPA believes an essential correlative in taking public comment on permits is responding to those comments such that an adequate record of the permit issuer's rationale is created. Responding to public comments ensures meaningful public participation in permitting as intended by the Clean Air Act.

In response to EPA's concerns regarding the PSC's responding to comments on CPCN applications, the General Counsel for the PSC did state in his January 25, 2011 letter to EPA referred to previously that interested persons would be able to raise to a PSC Hearing Examiner, during a prehearing scheduling conference which is part of the CPCN review process, any failure by the PSC to respond to public comments and the need for adequate time for the PSC to respond to comments in a scheduling order. *See* Robert Erwin's January 25, 2011 letter to MDE. In addition, the PSC's General Counsel stated that the failure to respond to comments could be brought to the PSC's attention before a CPCN becomes final during the CPCN approval hearing process. *Id.* EPA believes the commitment to respond to comments from the PSC's General Counsel as evidenced in the General Counsel's January 25, 2011 letter satisfies EPA's concerns that the PSC will respond to public comments on CPCN applications. EPA believes the Maryland SIP revision provides for full public participation as required by sections 110 and 165 of the CAA and its implementing regulations at 40 CFR 51.161 and 51.166 (with the exception of providing public access to documents in one location as discussed above). *See id.*

Comment 4: Finally, the Commenter asserts that the proposed Maryland SIP revision does not contain a requirement that the permit reviewing authority (the PSC) shall notify all permit applicants within a specified time period as to the completeness of the permit application or any deficiency in the application as required in 40 CFR 51.166(q)(1).

Response 4: EPA agrees with the Commenter that the Maryland SIP revision does not formally contain a requirement directly meeting 40 CFR 51.166(q)(1). EPA is granting limited approval to the PSC permitting program in the Maryland SIP until Maryland submits a regulation meeting 40 CFR 51.166(q)(1) (as well as 40 CFR 51.161(a) and (b)(1) as discussed previously). However, EPA has granted limited approval because EPA is satisfied that the PSC is meeting this requirement in practice. EPA believes the revised Maryland SIP as implemented by the PSC will appropriately address CPCN completeness determinations. According to 40 CFR 51.166(q)(1), a SIP shall provide that the ''reviewing authority shall notify all applicants within a specified time period as to the completeness of the application or any deficiency in the application or information submitted.'' EPA believes the General Counsel's January 25, 2011 letter addresses this issue. *See* Robert Erwin's January 25, 2011 letter to MDE. The PSC's General Counsel stated in the January 25, 2011 letter that parties should raise the issue of completeness determinations with the PSC Hearing Examiner at the Prehearing Scheduling Conference which is held during the CPCN application review process. The General Counsel stated that the PSC's Hearing Examiner for each CPCN application would hear argument and make a determination as to completeness of applications and subsequently either order an incomplete CPCN application be supplemented or make a finding on the record that a CPCN application was complete. *See id.* We believe the PSC provides adequate opportunities during the CPCN application process for parties to raise the issue of incomplete CPCN applications.

In addition, the statutory and regulatory provisions in the proposed Maryland SIP revision support EPA's belief that the PSC will act on completeness determinations. Pursuant to section 7–205(d), the PSC must render a decision on a CPCN application within 150 days of the filing of the CPCN application. *See* Md. Code Ann., Public Util. Cos. section 7–205(d). In addition, section 7–207(d) provides the requirements for the PSC to hold public hearings on CPCN applications, and section 7–208(e) follows along with the requirements in section 7–207(d) by requiring the PSC to grant or deny CPCN applications within 90 days of the conclusion of the hearings on the CPCN applications. Finally, the PSC's implementing regulations at COMAR 20.79.02.03, require the PSC to impose a schedule of procedural dates to ensure timely completion of the CPCN application process. Reading these statutory and regulatory provisions together with the PSC General Counsel's January 25, 2011 letter, EPA believes the Maryland SIP revision together with the PSC's implementation as described above satisfies the intent of 40 CFR 51.166(q)(1) sufficient for EPA to provide limited approval to the Maryland SIP revision until Maryland submits a regulation from the PSC for SIP approval formally addressing the requirements of 40 CFR 51.166(q)(1).

Furthermore, EPA believes the requirements of 40 CFR 51.166(q)(1) are intended to protect the interests of permit applicants in receiving timely review of permit applications. EPA does not believe that the Commenter is adversely affected by the PSC's failure to do a completeness determination on a particular CPCN. EPA has no reason to believe that the PSC is not conducting completeness determinations as discussed by the PSC's General Counsel and has received no adverse comment on this issue from the regulated and impacted community of electric generating stations.

Finally, EPA notes that the Commenter included additional statements in its Comments relating to CPCNs issued previously by the PSC and the federal enforceability of those CPCNs. To the extent that these comments do not relate to the Maryland SIP revision and are not relevant to EPA's limited approval of the SIP revision, EPA is not responding to those Comments here.

V. Final Action

EPA is granting limited approval in accordance with section 110(k) of the CAA, 42 U.S.C. section 7410(k), of MDE's May 13, 2011 SIP submission (#11–01), as amended on December 20, 2011 with the removal of COMAR 20.79.01.07, because the submission as amended strengthens Maryland's SIP. When the PSC adopts amended regulations which meet the requirements of 40 CFR 51.161(a) and (b)(1) and 51.166(q)(1), MDE may request full SIP approval of the permitting program for construction and modification of electric generating stations in Maryland.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to preconstruction requirements for Electric Generating Stations in Maryland may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 31, 2012.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by:

■ a. Revising the heading of the table.

■ b. Revising the existing entries for COMAR 26.11.02.09 and 26.11.02.10.

■ c. Adding entries for COMAR 20.79.01, 20.79.02 and 20.79.03 in numerical order after the existing entry for COMAR 03.03.06.06.

■ d. Adding new entries for ''Public Utility Companies Article of the Annotated Code of Maryland'' at the end of the table.

The amendments read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c)* * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
26.11.02 Permits, Approvals, and Registrations				
26.11.02.09	Sources Subject to Permits to Construct and Approvals.	11/16/09	2/10/12 [Insert page number where the document begins].	Revised 26.11.02.09A(1), (2); limited approval.
26.11.02.10	Sources Exempt from Permits to Construct and Approvals.	11/16/09	2/10/12 [Insert page number where the document begins].	Revised 26.11.02.10A; limited approval.

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—Continued

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
20.79.01 Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines—General				
20.79.01.01A, .01C, and .01D.	Scope	12/28/09	2/10/12 [Insert page number where the document begins].	Added; limited approval.
20.79.01.02A and .02B(1) through (13), (14)(a), (15), (16), and (18) through (20).	Definitions	12/28/09	2/10/12 [Insert page number where the document begins].	Added; limited approval.
20.79.01.06	Modifications to Facilities at a Power Plant.	12/28/09	2/10/12 [Insert page number where the document begins].	Added; limited approval.
20.79.02 Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines—Administrative Provisions				
20.79.02.01	Form of Application	2/10/97	2/10/12 [Insert page number where the document begins].	Added; limited approval.
20.79.02.02	Distribution of Application	2/10/97; 11/8/04	2/10/12 [Insert page number where the document begins].	Added; limited approval.
20.79.02.03	Proceedings on the Application.	2/10/97; 11/8/04	2/10/12 [Insert page number where the document begins].	Added; Limited approval.
20.79.03 Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines—Details of Filing Requirements—Generating Stations				
20.79.03.01	Description of Generating Station.	2/10/97; 11/8/04	2/10/12 [Insert page number where the document begins].	Added; limited approval.
20.79.03.02A and .02B(1) and (2).	Environmental Information	2/10/97; 11/8/04	2/10/12 [Insert page number where the document begins].	Added; limited approval.
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Annotated Code of Maryland citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
Public Utility Companies Article of the Annotated Code of Maryland				
Section 7–205	Electric Companies—Modification of Power Plant.	7/01/06	2/10/12 [Insert page number where the document begins].	Added; limited approval.
Section 7–207(a), (b)(1), (c), (d), and (e).	Generating Stations or Transmission Lines—General Certification Procedure.	7/01/07	2/10/12 [Insert page number where the document begins].	Added; limited approval.
Section 7–207.1(a) and (e)	Generating Stations or Transmission Lines—On-site Generated Electricity; Approval Process.	7/01/07	2/10/12 [Insert page number where the document begins].	Added; limited approval.
Section 7–208 (a)(1), (b) through (f), and (h)(2).	Generating Stations or Transmission Lines—Joint Construction of Station and Associated Lines.	7/01/01	2/10/12 [Insert page number where the document begins].	Added; limited approval.

* * * * *

[FR Doc. 2012–2984 Filed 2–9–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 71

[Docket No. CDC–2012–0003]

RIN 0920–AA47

Establishment of User Fees for Filovirus Testing of Nonhuman Primate Liver Samples

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Direct final rule and request for comments.

SUMMARY: Through this Direct Final Rule, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) is establishing a user fee for filovirus testing of all nonhuman primates that die during HHS/CDC-required 31-day quarantine period for any reason other than trauma. We are amending regulations to establish a filovirus testing service at HHS/CDC because testing is no longer being offered by the only private, commercial laboratory that previously performed these tests. This testing service will be funded through user fees. The direct final rule does not impose any new burdens on the regulated community because the testing of non-human primates for filovirus is a long-standing requirement and the amount of the user fee is consistent with the amount previously charged commercially. HHS/CDC is therefore publishing a direct final rule because it does not expect to receive any significant adverse comment and believes that the establishment of an HHS/CDC testing program and imposition of user fees are non-controversial. However, in this **Federal Register**, HHS/CDC is simultaneously publishing a companion notice of proposed rulemaking that proposes identical filovirus testing and user fee requirements. If HHS/CDC does not receive any significant adverse comment on this direct final rule within the specified comment period, it will publish a notice in the **Federal Register** confirming the effective date of this final rule within 30 days after the comment period on the direct final rule ends and withdraw the notice of proposed rulemaking. If HHS/CDC receives any timely significant adverse comment, it will withdraw the direct final rule in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends and proceed with notice and comment under the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. A significant adverse comment is one that explains: Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or why the direct final rule will be ineffective or unacceptable without a change.

DATES: The direct final rule is effective on March 12, 2012 unless significant adverse comment is received by April 10, 2012. If we receive no significant adverse comment within the specified comment period, we intend to publish a notice confirming the effective date of the final rule in the **Federal Register** within 30 days after the end of the comment period on this direct final rule. If we receive any timely significant adverse comment, we will withdraw this final rule in part or in whole by publication of a notice in the **Federal Register** within 30 days after the comment period ends.

ADDRESSES: You may submit comments, identified by ''RIN 0920–AA47'': by any of the following methods:

- *Internet:* Access the Federal e-rulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–03, Atlanta, Georgia 30333, ATTN: NHP DFR.

Instructions: All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. All comments will be posted without change to *http://regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, please go to *http://www.regulations.gov.* Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Time, at 1600 Clifton Road NE., Atlanta, Georgia 30333. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Global Migration and Quarantine (DGMQ) to schedule your visit. To download an electronic version of the rule, access *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions concerning this direct final rule: Ashley A. Marrone, JD, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404–498–1600. For information concerning program operations: Dr. Robert Mullan, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404–498–1600.

SUPPLEMENTARY INFORMATION:

This preamble is organized as follows:

I. Public Participation
II. Background
III. Rationale for Direct Final Rule
IV. User Fees
V. Services and Activities Covered by User Fees
VI. Analysis of User Fee Charge (Cost to Government)
VII. Payment Instructions
VIII. Regulatory Analysis
IX. References

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed publicly. Comments are invited on any topic related to this direct final rule.

II. Background

Filoviruses belong to a family of viruses known to cause severe hemorrhagic fever in humans and nonhuman primates (NHPs). So far, only two members of this virus family have been identified: Ebola virus and Marburg virus. Five species of Ebola virus have been acknowledged: Zaire, Sudan, Reston, Ivory Coast, and Bundibugyo. Most strains of Ebola virus can be highly fatal in humans, and while the Reston strain is the only strain of filovirus that has *not* been reported to cause disease in humans, it can be fatal in monkeys. (*http://www.cdc.gov/ncidod/dvrd/spb/mnpages/dispages/filoviruses.htm*).

Ebola hemorrhagic fever was first recognized in 1976, when two epidemics occurred in southern Sudan and in Zaire. Since that time, multiple outbreaks have occurred, mostly in Central Africa, and all have been associated with high (45–90%) case-fatality rates in humans (for an updated

list see *http://www.cdc.gov/ncidod/dvrd/spb/mnpages/dispages/ebola/ebolatable.htm*). In these epidemics, transmission of the disease originated or occurred in a hospital (often by contaminated needles) and was followed by person-to-person transmission by individuals who were exposed to, or had close contact with blood or secretions from seriously ill patients.

The ecology, natural history, and mode of transmission of Ebola virus in nature, and of the related Marburg virus, are becoming more clearly understood with the implication of bats as reservoirs. The incubation period for Ebola disease is 5–9 days (range: 2–15 days) but can be shorter with parenteral transmission. Disease onset is abrupt and characterized by severe malaise, headache, high fever, myalgia, joint pains, and sore throat. The progression is rapid and includes pharyngitis, conjunctivitis, diarrhea, abdominal pain, and occasionally facial edema and jaundice. Severe thrombocytopenia can occur, with hemorrhagic manifestations ranging from petechiae to frank bleeding. Death occurs primarily as a result of multi-organ failures. There is no specific therapy, and patient management is usually limited to supportive measures. The disease in nonhuman primates is very similar to that in humans, with a very high mortality.

On January 19, 1990, in response to the identification of Ebola-Reston virus in NHPs imported from the Philippines, HHS/CDC published interim guidelines for handling NHPs during transit and also during quarantine (1). Importers of NHPs were informed by letter from the HHS/CDC Director on March 15, 1990, that they must comply with specific isolation and quarantine standards under 42 CFR part 71 for continued registration as an importer of NHPs (2).

On March 23, 1990, HHS/CDC held a meeting at CDC headquarters in Atlanta, Georgia, at which the public could comment on new guidelines for the importation of NHPs and the potential impact of a temporary ban on the importation of cynomolgus monkeys into the United States (3). After considering information received at this public meeting, coupled with an April 4, 1990 confirmation of asymptomatic Ebola virus infection in four NHP caretakers and serologic findings suggesting that cynomolgus, African green, and rhesus monkeys posed a risk for human filovirus infection, HHS/CDC concluded that these three species were capable of being an animal host or vector of human disease (4).

As a result, on April 20, 1990, HHS/CDC published a notice in the **Federal Register** requiring a special-permit for importing cynomolgus, African green, and rhesus monkeys (5). To be granted a special-permit, importers must submit a plan to HHS/CDC describing specific isolation, quarantine, and communicable disease control measures. The plan must detail the measures to be carried out at every step of the chain of custody, from embarkation at the country of origin, through delivery of the NHPs to the quarantine facility and the completion of the required quarantine period. Additional requirements include detailed testing procedures for all quarantined NHPs to rule out the possibility of filovirus infection. When importers demonstrate compliance with these special-permit requirements, HHS/CDC authorizes continued shipments under the same permit for a period of 180 days. Certain components of the special-permit requirement have changed slightly in response to surveillance findings and the development of improved laboratory tests. As indicated in the 1990 notice, importers were informed of these changes by letter from HHS/CDC (6). The current special-permit notice requires filovirus antigen-detection testing on liver specimens from any NHP that dies during quarantine for reasons other than trauma (7, 8). Antibody testing is also required on surviving NHPs that exhibit signs of possible filovirus infection before the cohort is released from quarantine (9).

Since October 10, 1975, HHS/CDC has prohibited the importation of NHPs except for scientific, educational, or exhibition purposes. Over time, various measures (*e.g.,* reports, letters, guidelines, notices), have been used to support implementation of these regulations. On January 5, 2011 (76 FR 678), HHS/CDC posted a Notice of Proposed Rulemaking (NPRM) to begin the process of revising these requirements. The NPRM was intended to solicit public comment and feedback on the issue of NHP importation to determine the need for further rulemaking. Please see the docket details for HHS–OS–2011–0002 on *www.Regulations.gov,* for more information. The public comment period ended on April 25, 2011. HHS/CDC is now working toward finalizing the proposed rule and is not seeking additional comment on the NPRM through this rulemaking.

Laboratory testing of suspected NHPs and early detection of infected animals within the quarantine period prevents spread of disease among NHPs and caretakers (4). Since the implementation and strengthening of the 1990 special-permit requirements for importing nonhuman primates into the United States, the morbidity and mortality of imported animals has decreased from an estimated 20% to less than 1% (10). Since 1990, these laboratory tests have been conducted by a single commercial laboratory. Recently, a number of circumstances have arisen such that this laboratory is no longer able to perform the testing for filovirus required on liver specimens from monkeys that die during the HHS/CDC-mandated quarantine. Further, HHS/CDC notes that the reagents required for this testing are not commercially available and production of the reagents requires a biosafety level 4 laboratory (BSL–4). A BSL–4 laboratory is also required during part of the testing procedure. To our knowledge, neither commercial entities nor Federal laboratories other than those at HHS/CDC are planning to offer this service. Because HHS/CDC has the required laboratory facility, access to the reagents, and experienced personnel, it has started performing this testing when required and in the absence of a viable alternative.

III. Rationale for Direct Final Rule

Through this Direct Final Rule (DFR), HHS/CDC is establishing a user fee to reimburse HHS/CDC for the costs incurred performing these tests. Upon the effective date, every NHP quarantine facility will be contacted by HHS/CDC's Division of Global Migration and Quarantine (DGMQ), and will be instructed how to transfer tissue specimens to HHS/CDC for testing. After receipt of the specimens, HHS/CDC will process the specimens in its BSL–4 laboratory and test the specimens by an antigen-detection enzyme-linked immunosorbant assay (ELISA) or other appropriate methodology. Each specimen will be held for six months. After six months, the specimen will be disposed of following established HHS/CDC protocol. Based on information supplied by the commercial laboratory, HHS/CDC estimates that between 100 and 150 specimens per year are expected to be received and tested. Results will be provided to the NHP importers. If a positive test result is found, HHS/CDC will ensure that the NHP cohort is not released from HHS/CDC required quarantine until the health status of the full cohort is determined. This testing protocol will be maintained until further notice.

HHS/CDC has chosen to publish a Direct Final Rule (DFR) because we view this as a non-controversial action and anticipate no significant adverse

comment. This DFR does not create any additional requirements or burden upon the regulated community. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, HHS/CDC will consider whether it warrants a substantive response in a notice and comment process. If we receive significant adverse comment on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendment in this rule will not take effect. If this DFR is withdrawn, we will address all public comments in any subsequent final rule based on the Notice of Proposed Rulemaking which is published simultaneously in the **Federal Register**.

Nothing in this DFR is intended to prohibit a private sector facility from developing the capability and offering this same service in the future. The testing of non-human primate samples is necessary to prevent and control a potential outbreak of a filovirus infection in imported monkeys and to prevent the potential spread of filoviruses to humans.

IV. User Fees

Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701) (''IOAA'') provides general authority to Federal agencies to establish user fees through regulations. The IOAA sets parameters for any fee charged under its authority. Each charge shall be:

(1) Fair; and

(2) Based on—

(A) The costs to the Government;

(B) The value of the service or thing to the recipient;

(C) Public-policy or interest served; and

(D) Other relevant facts.

OMB Circular A–25 (''the Circular'') establishes general policy for implementing user fees, including criteria for determining amounts and exceptions, and guidelines for implementation. According to the Circular, its provisions must be applied to any fees collected pursuant to the IOAA authority.

The Circular states that ''[a] user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' The Circular gives three examples of when the special benefit is considered to accrue, including when a Government service: (a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (*e.g.,* receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or (b) provides business stability or contributes to public confidence in the business activity of the beneficiary (*e.g.,* insuring deposits in commercial banks); or (c) is performed at the request of, or for the convenience of, the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (*e.g.,* receiving a passport, visa, airman's certificate, or a Customs inspection after regular duty hours).

The Circular sets forth guidelines for determining the amount of user charges to assess. When the Government is acting in its sovereign capacity, user charges should be sufficient to cover the full cost to the Federal Government of providing the service, resource, or good.

The Circular sets forth criteria for determining full cost. ''Full cost includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' Examples of these types of costs include, but are not limited to, direct and indirect personnel costs, including salaries and fringe benefits; physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents; management and supervisory costs; and the costs of enforcement, collection, research, establishment of standards, and regulation. Full costs are determined based on the best available records of the agency.

Agencies are responsible for the initiation and adoption of user charge schedules consistent with the guidance listed in the Circular. In doing so, agencies should identify the services and activities covered by the Circular; determine the extent of the special benefits provided; and apply the principles set forth in the Circular in determining full cost or market cost as appropriate.

Finally, CDC has legal authority to retain collected user fees through its annual appropriations bill. In fiscal year 2012, this authority is provided through the Consolidated Appropriations Act of 2012, Public Law 112–74, 125 Stat. 1069, 1070 (2011).

V. Services and Activities Covered by User Fee

HHS/CDC is establishing a user fee to recoup the costs associated with performing the required testing. The user fee will cover the costs of the test for filovirus for specimens submitted to HHS/CDC. The following is a list of services and activities that are covered by the user fee:

- Providing information to the participants about the service, including instructions on submission of samples and payment;
- Receiving payment and maintaining account, including distributing funds;
- Tracking the shipment to ensure a safe arrival at HHS/CDC;
- Providing reagents for and performing the antigen-detection test on submitted NHP liver samples in a BSL–4, high-containment facility;
- Performing all provided services in accordance with industry standards, including quality assurance, handling and processing procedures, and hazardous medical waste guidelines; and
- Ensuring that the importer receives the test results in a timely manner.

VI. Analysis of User Fee Charge (Cost to the Government)

HHS/CDC's analysis of costs to the Government is based on the current methodology (ELISA) used to test NHP liver samples. This cost determines the amount of the user fee. HHS/CDC notes that the use of a different methodology or changes in the availability of ELISA reagents will affect the amount of the user fee. HHS/CDC will impose the fee by schedule and will notify importers of changes to the user fee by notice in the **Federal Register**. Importers may also contact HHS/CDC at 404–498–1600 or check its Web site (*http://www.cdc.gov/animalimportation/*) for an up-to-date fee schedule.

In its analysis of cost, HHS/CDC considered five components: (1) The cost of reagents and materials; (2) the cost of the BSL–4 laboratory in reagent production and during the assay; (3) the cost of irradiation of the sample; (4) personnel costs to perform the testing; and (5) administrative costs. The total cost to the Government is summarized in Table 1 followed by a description of each component; all monies reflected are in U.S. Dollars (USD).

TABLE 1—SUMMARY CALCULATIONS OF USER FEE CHARGE-PER-TEST

Components	Costs (USD)
1. Use of reagents and other materials	$100
2. Use of BSL–4 lab facility	112
3. Irradiation (inactivation) of sample	150
4. Personnel costs to conduct testing	145
5. Administrative costs	33
ESTIMATED TOTAL	540
User Fee	540

The first component in the estimate is the cost of the reagent materials and other materials necessary to perform the test. Two reagents are used to prepare the specific antibodies needed in the test. These reagents are not commercially available and must be made in-house by HHS/CDC scientists. Since these reagents are not commercially available, there is no commercial or observable product pricing. HHS/CDC estimates the cost for these reagents to be $70.00. This amount includes the cost of production and validation of the reagents. Material costs include plastic plates, pipettes, and other reagents. These items are available commercially and their cost is estimated at $30.00. Thus, the total estimated cost for this component totals $100.00 per test. This cost can be a bit higher or lower depending on how many tests are run at the same time. If the test requests come in one at a time, then the cost might be above $100, if there is more than one request at a time, the cost might be a bit less than $100. The test calls for the same amount of reagents for one or 3 samples to test.

The second component is the cost of the BSL–4 facility that is used to develop the reagents. We have estimated this cost on the charges made by University of Texas Medical Branch at Galveston (UTMB) of $28 per hour. The UTMB is the only BSL–4 facility in the United States that has developed commercial fees for the use of their labs. In the ELISA methodology, scientists need four hours in the BSL–4 laboratory to process the sample. The cost of this component is $112.00.

The third component in the cost estimate is the cost to inactivate the sample by irradiation in an irradiator. For this component, we estimate the cost to use an irradiator at $30 per hour. This estimate is based on a five-year cost of $300,000 to HHS/CDC to run and maintain the irradiator. Irradiators are extremely expensive to maintain for a number of reasons. Only research facilities have irradiator equipment because of the need to inactivate high-hazard pathogens. Safety restrictions on irradiators are complex and time consuming; requiring frequent, professional safety inspections and complex annual training for all personnel that work with or near the irradiator. Finally, a high level of security must be maintained because the complexities of using irradiators and the specimens being irradiated require access to be controlled and monitored. Typically it takes five hours to inactivate a sample, at a total estimated irradiation cost of $150.

The fourth component of the cost is the hourly wage and benefits of personnel who perform the laboratory tests. We assume that the scientist performing the test is a microbiologist with a masters' degree. Most of the personnel in this category are paid at a GS 11 level. For the purposes of this estimate, we have assumed a pay level of GS 11, Step 3. We set the basic wage at $25.70 per hour, and a benefit of 30% for a total hourly salary of $33.41 an hour (U.S. Office of Personnel Management 2010 General Schedule (GS) Locality Pay Tables for Atlanta; *http://www.opm.gov/oca/11tables/indexgs.asp*). In total, the tests take about 13 hours (four hours in the BSL–4; three hours of irradiation; and six hours running the test with interpretation). However, we assume that the person working on this test will be carrying on other duties simultaneously. Therefore, we assign one-third of the 13 hours of work time to the fourth part, or $145.00 ($434.33/3).

The fifth and final component is the administrative costs related to test result collection and dissemination. The individual responsible for the activities under this component is typically in a supervisory position. The supervisor examines the assay to ensure that the positive and negative tests (quality controls) are accurate, and to ensure that the test was performed according to prescribed scientific standards. The supervisor puts the results on a response form and sends the results to the importer with a copy to CDC's Division of Global Migration and Quarantine (DGMQ). To calculate this cost, we used half an hour of the salary and benefits of a GS 14 level, Senior Health Scientist (601 series). The hourly rate of a GS14, level 3 is $50 (U.S. Office of Personnel Management 2010 General Schedule (GS) Locality Pay Tables for Atlanta; *http://www.opm.gov/oca/10tables/indexgs.asp*). We added 30% of the hourly rate for benefits to total $65.00. Thirty minutes of this individual's time is $33.00.

Total cost: Adding these parts (Table 1) results in a grand total of $540. We note that our results can potentially vary from this figure for a couple of reasons. First, as mentioned already, commercial data are not available for some of the reagents so our calculation of their costs is an estimate and not based on observed market pricing. Second, the costs will vary depending on how many tests are conducted at one time. If multiple tests are run concurrently, then the costs would be a bit less. If only one test is conducted at one time, the costs will be relatively higher. Therefore, we set the cost of reimbursement per test at $540. We feel confident that this is a fair price to the importers because this amount is consistent with the sum charged by the commercial lab of $500.00 that previously performed these tests. We also note that our assumption of the effect of multiple tests is supported by past experience. HHS/CDC receives notification of about 100 to 150 requests performed per year. Although HHS/CDC cannot control the flow of tests and cannot forecast how many tests will be underway at any given point in time, HHS/CDC estimates that the total amount of fees charged will range from about $50,000 to $75,000 per year. The user fee charged for the testing will cover the costs of the test.

HHS/CDC will impose the user fee by schedule. An up-to-date fee schedule is available from the Division of Global Migration & Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia 30333, 404–498–1600, or [insert url of Web site].

VII. Payment Instructions

HHS/CDC Importers should submit a check or money order in the amount of $540.00 (USD) made payable to Centers for Disease Control and Prevention for each test conducted at the time that specimens are submitted to the CDC for testing. The check(s) should be sent to Centers for Disease Control and Prevention, P.O. Box 15580, Atlanta, GA 30333.

VIII. Regulatory Analyses

A. Required Regulatory Analyses under Executive Orders 12866 and 13563

We have examined the impacts of the direct final rule under Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages,

distributive impacts, and equity). Because the purpose of this rule is to provide a framework to determine a fair fee to charge for a service that has become unavailable in private, commercial markets within the United States, we have determined that the rule will not violate the intent of either of the Executive Orders because it will in no way prevent a private entity from entering the field and providing a similar, privatized service. If any private entity expresses an interest in providing this service, we will strongly encourage them to do so.

B. Regulatory Flexibility Act

We have examined the impacts of the direct final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). Unless we certify that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This regulatory action is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This direct final rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. The Paperwork Reduction Act of 1995

HHS/CDC has reviewed the information collection requirements of the direct final rule and has determined that the information collection requested in the direct final rule is already approved by the Office of Management and Budget (OMB) under OMB Control No. 0920–0263, expiration date 6/30/2014. The direct final rule does not contain any new data collection or record keeping requirements.

E. National Environmental Policy Act (NEPA)

Pursuant to 48 FR 9374 (list of HHS/CDC program actions that are categorically excluded from the NEPA environmental review process), HHS/CDC has determined that this action does not qualify for a categorical exclusion. In the absence of an applicable categorical exclusion, the Director, CDC, has determined that provisions amending 42 CFR 71.53 will not have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

F. Civil Justice Reform (Executive Order 12988)

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this direct final rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

G. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does 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.''

H. Plain Language Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

I. Conclusion

In accordance with the provisions of Executive Order 12866, this direct final rule was not reviewed by the Office of Management and Budget.

IX. References

1. Centers for Disease Control and Prevention. Update: Ebola-Related Filovirus Infection in Nonhuman Primates and Interim Guidelines for Handling Nonhuman Primates during Transit and Quarantine. Morbidity and Mortality Weekly Report MMWR 1990; 39(2):22–24, 29–30.
2. Roper, W.L. Dear interested party (letter). March 15, 1990. Available upon request: (404) 639–1600.
3. 55 FR 10288, March 20, 1990, ''Importation of Nonhuman Primates: Meeting.''
4. Centers for Disease Control and Prevention. Update: Filovirus Infection in Animal Handlers. Morbidity and Mortality Weekly Report MMWR 1990; 39(13):221.
5. 55 FR 15210, April 20, 1990, Requirement for a Special-permit to Import Cynomolgus, African Green, or rhesus Monkeys into the United States.
6. Roper, W.L. Dear interested party (letter). October 10, 1991. Available upon request: (404) 639–1600.
7. Ksiazek, Thomas G.; Rollin, Pierre E.; Jahrling, Peter B.; Johnson, Eugene; Dalgard, Dan W., and Peters, Clarence J. Enzyme immunosorbent assay for Ebola virus antigens in tissues of infected primates. Journal of Clinical Microbiology. 1992; 30(4):947–950.
8. Ksiazek, Thomas G. Laboratory diagnosis of filovirus infections in nonhuman primates. Laboratory Animal. 1991; 20(7):34–46.
9. Tipple, M.A. Dear interested party (letter). March 5, 1996. Available upon request: (404) 639–1600.
10. Demarcus, T., Tipple, M., Ostrowski, S., US Policy for Disease Control among Imported Nonhuman Primates, J Infect Dis. (1999) 179 (supplement 1): S281–S282.

List of Subjects in 42 CFR Part 71

Communicable diseases, Public health, Quarantine, Reporting and recordkeeping requirements, Testing, User fees.

For the reasons set forth in the preamble, amend 42 CFR part 71 as follows:

PART 71—FOREIGN QUARANTINE

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

Authority: Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); section 361–369, PHS Act, as amended (42 U.S.C. 264–272); 31 U.S.C. 9701.

Subpart F—Importations

■ 2. In § 71.53, add paragraph (j) to read as follows:

§ 71.53 Nonhuman primates.

* * * * *

(j) Filovirus testing fee. (1) Effective March 12, 2012, non-human primate importers shall be charged a fee for filovirus testing of non-human primate liver samples submitted to the Centers for Disease Control and Prevention (CDC).

(2) The fee shall be based on the cost of reagents and other materials necessary to perform the testing; the use of the laboratory testing facility; irradiation for inactivation of the sample; personnel costs associated with performance of the laboratory tests; and administrative costs for test planning, review of assay results, and dissemination of test results.

(3) An up-to-date fee schedule is available from the Division of Global Migration & Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia 30333. Any changes in the fee schedule will be published in the **Federal Register**.

(4) The fee must be paid in U.S. dollars at the time that the importer submits the specimens to HHS/CDC for testing.

Dated: January 19, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–2843 Filed 2–9–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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 final rule involves no policies that have federalism implications under Executive Order 13132.

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 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.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Humphreys County, Mississippi, and Incorporated Areas Docket No.: FEMA–B–1159			
Shallow Flooding	An area bounded by the county boundary to the west and south, the William M. Whittington Channel Levee to the east, and the confluence with Silver Creek and Straight Bayou to the north.	+100	Unincorporated Areas of Humphreys County
Yazoo River	Approximately 10 miles upstream of State Highway 12	+117	Unincorporated Areas of Humphreys County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 19.5 miles upstream of State Highway 12 ..	+120	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Humphreys County

Maps are available for inspection at 102 Castleman Street, Belzoni, MS 39038.

Taney County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1175

Beaver Creek (backwater effects from White River).	From the White River confluence to approximately 685 feet upstream of the White River confluence.	+698	Unincorporated Areas of Taney County.
Bee Creek (backwater effects from White River).	From the White River confluence to approximately 1,700 feet upstream of the White River confluence.	+698	Unincorporated Areas of Taney County.
Bull Creek (backwater effects from White River).	From the White River confluence to approximately 0.5 mile upstream of the White River confluence.	+716	City of Rockaway Beach, Unincorporated Areas of Taney County.
Big Shoals Lake	Entire shoreline	+724	Unincorporated Areas of Taney County.
Cooper Creek (backwater effects from White River).	From the White River confluence to approximately 685 feet upstream of the White River confluence.	+724	City of Branson, Unincorporated Areas of Taney County.
Silver Creek (backwater effects from White River).	From the White River confluence to approximately 0.8 mile upstream of the White River confluence.	+698	Unincorporated Areas of Taney County.
Swan Creek (backwater effects from White River).	From the White River confluence to approximately 1,290 feet upstream of Strawberry Road.	+698	City of Forsyth, Unincorporated Areas of Taney County.
White River	At the downstream side of Powersite Dam	+698	City of Forsyth, Unincorporated Areas of Taney County.
	At the White County, Arkansas boundary	+698	
White River Tributary 16 (backwater effects from White River).	From the White River confluence to approximately 1.5 miles upstream of the White River confluence.	+698	Unincorporated Areas of Taney County.
White River Tributary 24 (backwater effects from White River).	From the White River confluence to approximately 430 feet downstream of Frisco Hills Road.	+698	Unincorporated Areas of Taney County.
White River Tributary 30 (backwater effects from White River).	From the White River confluence to approximately 0.5 mile upstream of the White River confluence.	+698	City of Forsyth, Unincorporated Areas of Taney County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Branson

Maps are available for inspection at City Hall, 110 West Maddux Street, Suite 210, Branson, MO 65616.

City of Forsyth

Maps are available for inspection at City Hall, 15405 U.S. Route 160, Forsyth, MO 65653.

City of Rockaway Beach

Maps are available for inspection at City Hall, 2764 State Route 176, Rockaway Beach, MO 65740.

Unincorporated Areas of Taney County

Maps are available for inspection at the Taney County Courthouse, 132 David Street, Forsyth, MO 65653.

Rio Arriba County, New Mexico, and Incorporated Areas
Docket No.: FEMA–B–1112

Llano Ditch Tributary	Just downstream of McCurdy Road Northwest	+5655	Pueblo of Ohkay Owingeh, Unincorporated Areas of Rio Arriba County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Just upstream of Simmons Lane	+5705	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Pueblo of Ohkay Owingeh
Maps are available for inspection at the Pueblo of Okhay Owingeh Governor's Office, 1 Kee Road, Espanola, NM 87532.

Unincorporated Areas of Rio Arriba County
Maps are available for inspection at the Rio Arriba County Clerk's Office, 1122 Industrial Park Road, Espanola, NM 87532.

Jefferson County, Pennsylvania (All Jurisdictions)
Docket No.: FEMA–B–1128

Big Run	Approximately 1,500 feet downstream of the confluence with Trout Run.	+1281	Township of Henderson.
	Approximately 250 feet downstream of the confluence with Trout Run.	+1284	
Falls Creek	Approximately 1,740 feet downstream of the confluence with Wolf Run.	+1399	Township of Washington.
	Approximately 1,450 feet upstream of the confluence with Wolf Run.	+1415	
Fivemile Run	Approximately 260 feet upstream of the confluence with Sandy Lick Creek.	+1220	Township of Rose.
	Approximately 240 feet upstream of the confluence with Swamp Run.	+1231	
Mahoning Creek	Approximately 0.66 mile downstream of Lincoln Avenue	+1227	Township of Young.
	Approximately 0.64 mile downstream of Lincoln Avenue	+1227	
Mahoning Creek	At the confluence with Elk Run	+1234	Borough of Punxsutawney.
	Approximately 450 feet upstream of Graffius Avenue, on Elk Run.	+1234	
Mahoning Creek	Approximately 0.44 mile upstream of the confluence with Elk Run.	+1237	Township of Bell.
	Approximately 0.46 mile upstream of the confluence with Elk Run.	+1237	
Rattlesnake Creek	Approximately 200 feet upstream of the confluence with Rattlesnake Run.	+1468	Township of Washington.
	Approximately 250 feet upstream of the confluence with Rattlesnake Run.	+1468	
Redbank Creek	Approximately 1 mile upstream of the confluence with Coder Run.	+1210	Township of Rose.
	Approximately 0.70 mile downstream of White Street	+1212	
Sandy Lick Creek	Approximately 0.28 mile downstream of 2nd Street	+1216	Township of Rose.
	Approximately 1,050 feet downstream of 2nd Street	+1217	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Borough of Punxsutawney
Maps are available for inspection at the Mahoning East Civic Center, 301 East Mahoning Street, Punxsutawney, PA 15767.

Township of Bell
Maps are available for inspection at the Bell Township Building, 103 Runway Drive, Punxsutawney, PA 15767.

Township of Henderson
Maps are available for inspection at the Henderson Township Hall, 2801 Pine Run Road, Sigel, PA 15767.

Township of Rose
Maps are available for inspection at the Rose Township Hall, 17042 State Route 36, Brookville, PA 15825.

Township of Washington
Maps are available for inspection at the Washington Township Office, 2933 Airport Road, Falls Creek, PA 15840.

Township of Young
Maps are available for inspection at the Young Township Office, 1517 Walston Road, Walston, PA 15781.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Burnet County, Texas, and Incorporated Areas Docket No.: FEMA–B–1061			
Colorado River	Approximately 0.88 mile upstream of the confluence with Wolf Hollow Creek.	+163	Unincorporated Areas of Burnet County.
	At the confluence of Varnhagan Creek	+768	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Burnet County

Maps are available for inspection at 220 South Pierce Street, Burnet, TX 78611.

Ector County, Texas, and Incorporated Areas Docket No.: FEMA–B–1047			
Flooding Effects of Eastside Channel and its Split Flow.	Just downstream of Pacific Union Railroad	+2887	City of Odessa, Unincorporated Areas of Ector County.
	Just downstream of Pueblo Avenue	+2906	
	Approximately 200 feet upstream of the intersection of Custer Avenue and Eastside Channel.	+2912	
Flooding Effects of Monahans Draw.	Just upstream of Grandview Road	+2842	Unincorporated Areas of Ector County.
	Just upstream of South Crane Avenue	+2878	
	Just upstream of West County Road	+2884	
	Just upstream of Westcliff Drive	+3009	
	Just upstream of State Highway 866	+3043	
Flooding effects of Far East Channel and its subsidiary channels.	At the confluence of East Side Channel	+2857	City of Odessa, Unincorporated Areas of Ector County.
	Approximately 450 feet upstream of the intersection of Caliche Road.	+2899	
	Just upstream of Maple Avenue	+2907	
Flooding effects of West Side Drainage Channel.	At the confluence of Monahans Draw	+2896	City of Odessa.
	Just upstream of West 16th Street	+2909	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Odessa

Maps are available for inspection at 411 West 8th Street, Odessa, TX 79761.

Unincorporated Areas of Ector County

Maps are available for inspection at 521 North Texas Street, Odessa, TX 79761.

Wasatch County, Utah, and Incorporated Areas Docket No.: FEMA–B–1083			
Center Creek	At the confluence with Surplus Canal	+5628	City of Heber City, Town of Independence, Unincorporated Areas of Wasatch County.
	Approximately 2,914 feet upstream of the upper Center Creek Road crossing.	+6573	
Humbug Canal	At the confluence with Center Creek	+5685	City of Heber City, Unincorporated Areas of Wasatch County.
	Approximately 566 feet upstream of 600 South Street	+5692	
Lake Creek	At the diversion to South Lake Creek and North Lake Creek.	+5860	Unincorporated Areas of Wasatch County.
	Approximately 0.73 mile upstream of Lake Pines Drive	+6738	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Lower Wasatch Canal	At U.S. Route 189	+5634	City of Heber City, Unincorporated Areas of Wasatch County.
	Approximately 800 feet upstream of Mill Road	+5694	
North Lake Creek	Approximately 800 feet upstream of Mill Road	+5694	City of Heber City, Unincorporated Areas of Wasatch County.
	At the diversion from Lake Creek	+5860	
Snake Creek	At the confluence with the Middle Provo River	+5422	City of Midway, Unincorporated Areas of Wasatch County.
	Approximately 210 feet upstream of Warm Springs Road	+5760	
South Lake Creek	Approximately 566 feet upstream of 600 South Street	+5692	City of Heber City, Unincorporated Areas of Wasatch County.
	At the diversion from Lake Creek	+5860	
Surplus Canal	At the confluence with the Middle Provo River	+5433	City of Heber City, Unincorporated Areas of Wasatch County.
	At U.S. Route 189	+5634	
Upper Provo River	Approximately 0.52 mile downstream of State Route 32	+6186	Unincorporated Areas of Wasatch County.
	Approximately 0.28 mile upstream of Moonlight Drive	+6426	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Heber City
Maps are available for inspection at 75 North Main Street, Heber City, UT 84032.

City of Midway
Maps are available for inspection at 75 North 100 West, Midway, UT 84032.

Town of Independence
Maps are available for inspection at 4530 East Center Creek Road, Heber City, UT 84032.

Unincorporated Areas of Wasatch County
Maps are available for inspection at 25 North Main Street, Heber City, UT 84032.

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

Dated: January 30, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–3171 Filed 2–9–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C

Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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 final rule involves no policies that have federalism implications under Executive Order 13132.

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 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.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
Unincorporated Areas of Nowata County, Oklahoma Docket No.: FEMA–B–1171				
Oklahoma	Unincorporated Areas of Nowata County.	Southwest Tributary	At the downstream side of E0230 Road	+687
			Approximately 0.4 mile upstream of E0230 Road.	+696

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Nowata County

Maps are available for inspection at the Nowata County Office, 229 North Maple Street, Nowata, OK 74048.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
St. Lucie County, Florida, and Incorporated Areas Docket No.: FEMA–B–1164			
Canal 8	At the confluence with Fivemile Creek	+12	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
	Approximately 1,385 feet upstream of Summit Street	+18	
Fivemile Creek	At Peterson Road	+16	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
	Approximately 0.5 mile upstream of Peterson Road	+16	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Howard Creek	Approximately 1,635 feet downstream of Southeast Ballantrae Boulevard.	+6	City of Port St. Lucie, Unincorporated Areas of St. Lucie County.
	Approximately 0.6 mile upstream of Southeast Westmoreland Boulevard.	+13	
Ponding Area	Ponding area bounded by Virginia Park Boulevard to the north, west, and south, and South 35th Street to the east.	+15	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
Ponding Area	Ponding area bounded by State Highway 70 to the north, South 35th Street to the west, Cortez Boulevard to the south, and South 29th Street to the east.	+15	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
Ponding Area	Ponding area bounded by State Highway 70 to the north, South 29th Street to the west, Cortez Boulevard to the south, and Placid Avenue to the east.	+16	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
Ponding Area	Ponding area bounded by Royal Palm Drive to the north, South 25th Street to the west, Cortez Boulevard to the south, and South 19th Street to the east.	+17	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
Ponding Area	Ponding area bounded by Cortez Boulevard to the north, South 25th Street to the west, Edwards Road to the south, and Admiral Street to the east.	+17	City of Fort Pierce, Unincorporated Areas of St. Lucie County.
Ponding Area	Ponding area bounded by Arnold Road to the north, Fivemile Creek to the west, Kirby Loop Road to the south, and Virginia Park Boulevard to the east.	+14	City of Fort Pierce.
Ponding Area	Ponding area bounded by State Highway 70 to the north, South 35th Street to the west, Cortez Boulevard to the south, and South 29th Street to the east.	+16	City of Fort Pierce.
Ponding Area	Ponding area bounded by State Highway 70 to the north, South 35th Street to the west, Cortez Boulevard to the south, and South 29th Street to the east.	+17	City of Fort Pierce.
Ponding Area	Ponding area bounded by Linda Sue Circle to the north, west, south, and east.	+17	City of Fort Pierce.
Tenmile Creek Tributary	At McCarty Road	+19	City of Port St. Lucie, Unincorporated Areas of St. Lucie County.
	Approximately 1,400 feet upstream of Newell Road	+21	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Fort Pierce
Maps are available for inspection at City Hall, 100 North U.S. Route 1, Fort Pierce, FL 34950.

City of Port St. Lucie
Maps are available for inspection at City Hall, 121 Southwest Port St. Lucie Boulevard, Port St. Lucie, FL 34984.

Unincorporated Areas of St. Lucie County
Maps are available for inspection at the St. Lucie County Building Department, 2300 Virginia Avenue, Fort Pierce, FL 34982.

White County, Illinois, and Incorporated Areas Docket No.: FEMA–B–1174

Griffith Lake	Entire shoreline	+391	City of Carmi.
Little Wabash River	Approximately 0.7 mile upstream of County Highway 23	+377	City of Carmi, Unincorporated Areas of White County.
	At County Road 1200 East (Lowe Road)	+381	
Old Channel Wabash River	Approximately 0.82 mile downstream of Mulberry Street extended.	+386	City of Grayville.
	Approximately 250 feet downstream of North Street extended.	+386	
Unnamed Ponding Area	Entire area of ponding north of the abandoned railroad	+398	City of Carmi, Unincorporated Areas of White County.
Unnamed Tributary to Little Wabash River.	At the upstream side of College Boulevard	+379	City of Carmi, Unincorporated Areas of White County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	At the downstream side of the abandoned railroad (approximately 1.94 miles upstream of the Little Wabash River confluence).	+394	
Unnamed Tributary to Little Wabash River, West Branch	At the Unnamed Tributary to Little Wabash River confluence.	+380	City of Carmi, Unincorporated Areas of White County.
	At the downstream side of Fairground Road	+383	
Wabash River	Approximately 0.51 mile downstream of County Road 1100 North (Emma Street) extended.	+374	Village of Maunie.
	Approximately 480 feet upstream of County Road 1100 North (Emma Street) extended.	+375	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Carmi
Maps are available for inspection at City Hall, 225 East Main Street, Carmi, IL 62821.

City of Grayville
Maps are available for inspection at City Hall, 122 South Court Street, Grayville, IL 62844.

Unincorporated Areas of White County
Maps are available for inspection at the White County Courthouse, 301 East Main Street, Carmi, IL 62821.

Village of Maunie
Maps are available for inspection at the Village Hall, 328 Sheridan Street, Maunie, IL 62861.

Stearns County, Minnesota, and Incorporated Areas Docket Nos.: FEMA–B–1137 and FEMA–B–1185

Clearwater River	Approximately 60 feet upstream of State Highway 55	+1,010	Unincorporated Areas of Stearns County.
	Approximately 1,600 feet upstream of State Highway 55	+1,011	
Sauk Lake	Entire shoreline within community	+1,232	Unincorporated Areas of Stearns County.
Sauk River	Approximately 7,260 feet downstream of County Route 17	+1,226	City of Sauk Centre, Unincorporated Areas of Stearns County.
	Approximately 1,450 feet downstream of Main Street	+1,227	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Sauk Centre
Maps are available for inspection at 320 Oak Street South, Sauk Centre, MN 56378.

Unincorporated Areas of Stearns County
Maps are available for inspection at the Stearns County Administration Center, 705 Courthouse Square, St. Cloud, MN 56303.

Issaquena County, Mississippi, and Incorporated Areas Docket No.: FEMA–B–1159

Mississippi River	Approximately 5.3 miles upstream of the U.S. Route 80 bridge.	+112	Unincorporated Areas of Issaquena County.
	Approximately 9.3 miles upstream of the U.S. Route 80 bridge.	+120	
Steele Bayou	An area bounded by the county boundary to the north, west, south, and east.	+100	Town of Mayersville, Unincorporated Areas of Issaquena County.
Yazoo River	Approximately 6 miles downstream of U.S. Route 61	+105	Unincorporated Areas of Issaquena County.
	Approximately 12 miles upstream of U.S. Route 61	+105	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

ADDRESSES

Town of Mayersville

Maps are available for inspection at 132 Court Street, Mayersville, MS 39113.

Unincorporated Areas of Issaquena County

Maps are available for inspection at 129 Court Street, Mayersville, MS 39113.

Yazoo County, Mississippi, and Incorporated Areas Docket No.: FEMA–B–1159

Big Black River	Approximately 21.9 miles downstream of U.S. Route 49	+149	Unincorporated Areas of Yazoo County.
	Approximately 10.7 miles downstream of U.S. Route 49	+155	
Collins Creek	An area bounded by the Yazoo River Levee to the north and west, State Highway 3 to the south, and Germania Road to the east.	+93	Unincorporated Areas of Yazoo County.
Satartia Creek (backwater effects from Mississippi River).	Approximately 0.75 mile downstream of State Highway 3	+105	Unincorporated Areas of Yazoo County.
	Approximately 1,900 feet downstream of State Highway 3	+105	
Steele Bayou	An area bounded by the county boundary to the north, west, and south, and the William M. Whittington Canal Levee to the east.	+100	Unincorporated Areas of Yazoo County.
Yazoo River (backwater effects from Mississippi River).	Approximately 21 miles downstream of Satartia Road	+105	Unincorporated Areas of Yazoo County.
	Approximately 15 miles downstream of Satartia Road	+105	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Yazoo County

Maps are available for inspection at 211 East Broadway Street, Yazoo City, MS 39194.

Clark County, Missouri, and Incorporated Areas Docket No.: FEMA–B–1170

Big Branch (backwater effects from Mississippi River).	From the Honey Creek confluence to approximately 0.5 mile downstream of State Highway H.	+497	Unincorporated Areas of Clark County.
Buck Run (overflow effects from Mississippi River).	At the Lewis County boundary	+495	Unincorporated Areas of Clark County.
	Approximately 0.6 mile downstream of Avenue of the Saints.	+496	
Doe Run (backwater effects from Mississippi River).	From the Lewis County boundary to approximately 1,290 feet downstream of Avenue of the Saints.	+496	Unincorporated Areas of Clark County.
Mississippi River	Approximately 2.5 miles downstream of the Fox River confluence.	+495	City of Alexandria, Unincorporated Areas of Clark County.
	At the Des Moines River confluence	+499	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Alexandria

Maps are available for inspection at the Community Center, 109 Market Street, Alexandria, MO 63430.

Unincorporated Areas of Clark County

Maps are available for inspection at the Clark County Courthouse, 111 East Court Street, Suite 4, Kahoka, MO 63445.

Schoharie County, New York (All Jurisdictions) Docket No.: FEMA–B–1076

Cobleskill Creek	Approximately 490 feet downstream of New York State Route 10/7.	+919	Town of Cobleskill, Town of Richmondville, Village of Richmondville.
	Approximately 600 feet upstream of the I–88 Exit 20 ramp	+1,013	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Cobleskill
Maps are available for inspection at the Town Office, 378 Mineral Springs Road, Cobleskill, NY 12043.

Town of Richmondville
Maps are available for inspection at the Richmondville Town Hall, 340 Main Street, Richmondville, NY 12149.

Village of Richmondville
Maps are available for inspection at the Richmondville Village Hall, 295 Main Street, Richmondville, NY 12149.

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

Dated: January 26, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–3179 Filed 2–9–12; 8:45 am]

BILLING CODE 9110–12–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532 and 552

[GSAR Amendment 2012–01; GSAR Case 2010–G509 (Change 53) Docket 2011–0009; Sequence 1]

RIN 3090–AJ13

General Services Administration Acquisition Regulation; Reinstatement of Coverage Pertaining to Final Payment Under Construction and Building Service Contracts

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

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to restore guidance on the release of claims after completion of construction and building service contracts to ensure contractors are paid in accordance with their contract requirements and for work performed. This guidance, which prescribed the use of GSA Form 1142, Release of Claims, for releases of claims under construction and building service contracts, 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.

DATES: *Effective Date:* March 12, 2012.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221, or by email at *edward.chambers@gsa.gov*. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB), 1275 First Street, 7th Floor, Washington, DC 20417, (202) 501–4755. Please cite GSAR Amendment 2012–01, GSAR Case 2010–G509.

SUPPLEMENTARY INFORMATION:

A. Background

GSA issued a proposed rule in the **Federal Register** at 76 FR 13329, March 11, 2011 to restore coverage on making final payments under construction and building service contracts. A release of claims is a requirement under GSAR clause 552.232–72, Final Payment, precedent to making final payment under construction and building service contracts. GSA contracting officers have relied upon GSA Form 1142 to obtain the release of claims under these contracts. However, GSAR 532.905–71 which prescribed the use of GSA Form 1142 for releases of claims under construction and building service contracts was inadvertently deleted as part of the Rewrite of GSAR Part 532, Contract Financing published in the **Federal Register** at 74 FR 54915, October 29, 2009, GSAR Case 2006–G515. GSAR 532.905–71 also provided guidance on deductions to final payments under construction and building service contracts.

The GSA Form 1142, Release of Claims, uses standard language for contractors to attest that it has no claims, or no claims except for those they may set forth where indicated on the form. The form requires a signature from the contractor and a witness. Additionally, there is a location for the firm's seal.

GSA believes that GSA Form 1142 provides great value and accountability in providing uniformity and consistency for the release of claims process. Without the GSA Form 1142, GSA contracting officers will be required to verify that contractor release of claims letter includes appropriate wording before final payment is made, resulting in their devotion of considerable additional resources to this process. Further, the coverage on deductions under GSAR 532.905–71 is useful in preventing overpayments to contractors consistent with the Office of Management and Budget's efforts to reduce improper payments and the reissuance of OMB Circular A–123 which implements the Improper Payments Elimination and Recovery Act (IPERA, Pub. L. 111–204).

Since the referenced GSAR Rewrite of Part 532 in the **Federal Register** at 74 FR 54915, October 26, 2009, also deleted GSAR 532.905–70, this coverage is restored at GSAR 532.905–70 vice GSAR 532.905–71.

B. Public Comments

The public comment period closed on May 10, 2011. Three respondents submitted comments on the proposed rule. These responses included a total of 18 comments on 9 issues as stated below:

Comment: The proposed GSAR coverage addresses both construction and building service contracts, so that each contract type requires the GSA Form 1142, ''Release of Claims,'' but that the proposed language refers only to the construction payment clause at FAR 52.232–5, and indicates that this clause also applies to building services. Revise GSAR 532.905–70(a) to read as follows: ''The Government shall pay the

final amount due the Contractor under this contract after the documentation in the payment clauses of the contract is submitted. This would include the final release required for construction at FAR clause 52.232–5, and for building services at GSAR clause 552.232–72.''

Move the existing coverage on GSAR clause 552.232–72 from its current location at GSAR 532.904(b) to 532.905, so that it is in the same place as the proposed language.

Response: The comment regarding the revision to GSAR 532.905–70(a) has been adopted and this paragraph now largely reflects the suggested language. However, it was decided not to relocate the prescriptive language for GSAR clause 552.232–72 from its current location at GSAR 532.904(b) to 532.905.

GSAR 532.904 concerns determining payment due dates and GSAR clause 552.232–72 informs vendors that their final payments may only occur after their submission of a release of claims. On the other hand, GSAR 532.905 concerns the broad areas of payment documentation and process. Thus, GSAR clause 552.232–72 better aligns with GSAR 532.904 rather than GSAR 532.905.

Comment: The term deductions should be clarified to distinguish it from funds that are just withheld temporarily, such as when a Department of Labor investigation does not find any labor violations.

GSA should remind contracting officers that a unilateral deobligation modification at contract close-out can only be accomplished using the authority of one of the FAR clauses in accordance with FAR 43.103(b)(3) (*e.g.* Liquidated Damages, SCA, and DBA).

How does GSA propose to place ''withheld money'' in a ''deposit fund'' and transfer ''same'' to Department of Labor (DOL) for labor violations without a modification against the contract to reduce the total value to reflect this action? The respondent goes on that likewise without a formal modification to assess liquidated damages, authorized under FAR 52.211 clauses, that have accrued against the contract, in the same way that unilateral change orders are, then the Government risks having an issue at contract close-out with funds remaining. Without a formal modification, the respondent contends that GSA will create problems at contract close-out when the ''withheld funds'' remain open on the contract.

Response: A sample list of deductions is provided at GSAR 532.905–70; therefore, there is no need to provide further definitions. The FAR Subpart 43.1 provides instructions on the use of bilateral and unilateral modifications. GSA's contracting officers know the limits of unilateral modifications, and consequently, specific guidance is not needed in the GSAR on this matter. Because withholding funds is an established practice under Government contracts in accordance with FAR section 32.111, GSA does not see the need to create the ''deposit fund'' suggested by this commenter. Regarding the possibility of modifications not being executed and the risk of relying on the release of claims to make such necessary adjustments, modifications are typically executed in advance of contract closeout to make necessary adjustments.

Comment: GSA's Form 1142 Release of Claims form contains no OMB control number indicating it has been approved for the collection of information.

Response: GSA Form 1142 has been assigned an OMB Control Number of 3090–0080 with an expiration date of 3/31/2012. With this GSAR correction, the form is available for use.

Comment: One respondent states that there is no indication that a Regulatory Flexibility Analysis was ever performed to reflect the burden or impact on contractors, including small businesses, especially the requirements for a ''witness'' and a ''seal.'' This respondent states further that the requirement for a hardcopy notary/witness and seal seems outdated, unreasonable, and that GSA is being overly restrictive by requiring a ''seal.''

Another respondent affirms that the proposed requirement to have the form witnessed and include the firm's seal provides a burden to the contractor. This burden could be greatest on small businesses that do not have a company seal on hand and are therefore forced to seek out a notary. The contractor's signature on the GSA Form 1142 is sufficient to complete the release process. The requirement on the GSA Form 1142 to have a witness and include the firm's seal should be removed when the form is reinstated.

Response: The costs associated with executing the notary/witness and seal are considered miniscule, and consequently represent, at most, a negligible burden on both large and small businesses. Further, notice is taken that many banking institutions offer notarization as a complimentary service or for a minor fee. It is customary for firms to have a company seal to use when conducting government or commercial business. However, the cost of attaining a company seal is considered insignificant. The notarization of the document serves to attest to the importance of this document.

Comment: The GSA Form 1142 fails to advise contractors, especially small businesses that, by signing the form, they are likely waiving their rights to submit claims permitted under the Disputes Act. It is improper for the Government to require an unconditional release from contractors as a prerequisite for final payment. The form should be revised to recognize a contractor's right to submit claims ''within 6 years following the release date or notice of final payment date, whichever is earlier'' as set forth in FAR clause 52.216–7(h)(2)(ii), and FAR 33.206, when a claim was unknown at the time of executing the form. Similarly the form should allow contractors the ability to cite ''estimated amounts when the exact amounts are not known'' as permitted under the same FAR clause.

Response: Instructing contractors on the legal implications under the Disputes Act of their executing the form, or of their right under FAR 33.206 to submit claims within 6 years following the release date or notice of final payment date, whichever is earlier, goes beyond the purpose of the form. Finally, it is necessary to inform contractors to cite estimated amounts when exact amounts are not known. The use of such qualifying terms such as ''estimated'' amounts is implicit in the existing language.

Comment: Since releases of claims are cited in FAR 52.232–7(g) for Time & Material/Labor Hour contracts, and in parentheses as an example (''*e.g.*'') under 52.232–26 and –27 for architect-engineer (A–E) and construction contracts, respectively, it would seem more appropriate for the FAR Council to develop a Standard Form (SF) to be used by all agencies in accordance with FAR 1.304(c) since it is not just pertinent to GSA and since releases apply to final payments, it is highly recommended that GSA and/or the FAR Council consider allowing contractors to submit the release jointly along with the electronic submission of a final invoice request.

Response: The development of a Governmentwide standard form for the release of claims is beyond the scope of this case.

Comment: One respondent states that GSA's allowance for contracting officers (COs) to make ''repeated attempts'' to obtain a release of claims from contractors under GSAM 532.904 could be construed as coercion penalizing contractors by withholding funds ''without cause.'' The GSAM should justify the reasonableness of withholding any funds from contractors beyond the 30 days authorized by FAR for final payments. The respondent

further states that any ''unreasonable delay'' in payment could, by law, convert invoices into a claim. The respondent recommends that GSA consider establishing a limit to the number of ''repeated attempts'' and a maximum number of days for GSA COs to withhold final payment from the date when the invoice is officially received.

Another respondent recommends that the proposed GSAM 532.905–70(c) should provide further guidance on the documentation the CO should provide to legal counsel to obtain approval on a release where the CO was unable to obtain the release after 60 days from the initial attempt. The process should be standardized within GSAM so that legal counsel in one GSA region does not require a second or third attempt before approval is granted, while another region grants approval after the first 60 day attempt.

Response: The submission of an executed GSA Form 1142 is not an unreasonable stipulation for a contractor to receive final payment. The GSA Form 1142 is a necessary tool to allow the Government to obtain a final settlement of costs. GSA does not believe that a requirement for a justification for payments in excess of 30 days would be useful, as this will further delay final payment. Additionally, it would not be prudent to establish a standard number of attempts to secure an executed GSA Form 1142 before obtaining approval of assigned legal counsel to make final payment, but rather the number of attempts should be a function of the particular circumstances involved in obtaining the release. The process of submitting documentation to assigned legal, to support making final payment where the CO was unable to obtain the release of claims after 60 days from the initial attempt, should not be standardized, as the documentation requirements may vary by circumstances.

Comment: GSA Form 1142 may serve to shift the responsibility for contracting officers to ensure that the Government does not overpay contractors and ''proper'' payments to contractors are made, only upon ensuring services have been received and accepted, to contractors. In what way would a contractor's Release of Claims ensure that a contracting officer does not overpay a contractor or authorize/approve ''improper payments'' to a contractor? How does GSA support its claim that clause 532.905–71 was useful in preventing overpayments to contractors, is it supported by analysis or statistical documentation?

Response: The GSA Form 1142 does not shift to contractors the responsibility for contracting officers to ensure that the Government does not overpay contractors, and ''proper'' payments to contractors are made only upon ensuring services have been received and accepted. Rather, GSA views the release as another tool for the contracting officer to ensure that correct payments have been made. To the extent that GSA Form 1142 requires contractors to identify outstanding claims, it serves to prevent under payments. The information collected was determined necessary to ensure the Government issues correct payments to contractors and the form facilitates that activity; thereby, serving as GSA's rationale for determining the usefulness of GSAR clause 532.905–71 in preventing overpayments to contractors.

Comment: Has GSA even considered the prospect of obtaining a release electronically via email in lieu of a hardcopy/form?

Response: This rule was established to reinstate the use of GSA Form 1142, Release of Claims as a tool for contracting officers to obtain the release of claims under construction and building service contracts. At this time, consideration has not been given to a release electronically via email in lieu of a hardcopy/form.

C. Executive Orders 12866 and 13563

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804. In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, GSA has determined that this rule is not excessively burdensome to the public, the GSA Form 1142, as prescribed by the rule, is useful to the Government to make certain that the contractor receives proper payment for work performed and aids contractors in presenting their release of claims to the Government.

D. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not 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 requires the contractor to sign a release of claims form and is considered administrative in nature. Submission of this information should provide a consistent format that the contractor can use to report their claims information to the GSA contracting officer.

E. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0080. This approval was not rescinded when GSAR 532.905–71, which prescribed the use of GSA Form 1142 for releases of claims under construction and building service contracts, was inadvertently deleted as part of the Rewrite of GSAR Part 532, Contract Financing, published in the **Federal Register** at 74 FR 54915, October 29, 2009, GSAR Case 2006–G515.

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

Dated: February 3, 2012.

Joseph A. Neurauter,

Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.

Therefore, GSA amends 48 CFR parts 532 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 532 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 532—CONTRACT FINANCING

■ 2. Add section 532.905–70 to read as follows:

532.905–70 Final payment—construction and building service contracts.

The following procedures apply to construction and building service contracts:

(a) The Government shall pay the final amount due the Contractor under this contract after the documentation in the payment clauses of the contract is submitted. This includes the final release prescribed for construction at FAR 52.232–5, and for building services at GSAR 552.232–72.

(b) Contracting officers may not process the final payment on construction or building service contracts until the contractor submits a properly executed GSA Form 1142, Release of Claims, except as provided in paragraph (c) of this section.

(c) In cases where, after 60 days from the initial attempt, the contracting officer is unable to obtain a release of claims from the contractor, the final payment may be processed with the approval of assigned legal counsel.

(d) The amount of final payment must include, as appropriate, deductions to cover any of the following:

(1) Liquidated damages for late completion.

(2) Liquidated damages for labor violations.

(3) Amount withheld for improper payment of labor wages.

(4) The amount of unilateral change orders covering defects and omissions.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Revise section 552.232–72 to read as follows:

552.232–72 Final Payment Under Building Services Contracts.

As prescribed in 532.904(c), insert the following clause:

Final Payment Under Building Services Contracts (MAR 2012)

Before final payment is made, the Contractor shall complete and furnish the Contracting Officer with GSA Form 1142, Release of Claims, releasing all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

[FR Doc. 2012–3047 Filed 2–9–12; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217095–2081–04]

RIN 0648–AY56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 32

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in Amendment 32 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 32) prepared by the Gulf of Mexico Fishery Management Council (Council). This rule adjusts the commercial gag quota and recreational annual catch target (ACT) for 2012 through 2015 and subsequent fishing years, consistent with the gag rebuilding plan established in Amendment 32; adjusts the shallow-water grouper (SWG) quota; adjusts the commercial and recreational sector annual catch limits (ACLs) for gag and red grouper; adjusts the commercial ACL for SWG; establishes a formula-based method for setting gag and red grouper multi-use allocation for the grouper/tilefish individual fishing quota (IFQ) program in the Gulf of Mexico (Gulf); sets the recreational gag fishing season from July 1 through October 31; reduces the gag commercial size limit to 22 inches (59 cm) total length (TL); and modifies the gag and red grouper accountability measures (AMs). In addition, Amendment 32 establishes gag commercial ACTs and a 10-year gag rebuilding plan consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule is intended to end overfishing of gag, allow the gag stock to rebuild, and adjust red grouper management measures to allow the harvest of optimum yield (OY).

DATES: This rule is effective March 12, 2012.

ADDRESSES: Electronic copies of Amendment 32, which includes a final environmental impact statement, a regulatory flexibility act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On October 27, 2011, NMFS published a notice of availability for Amendment 32 and requested public comment (76 FR 66672). NMFS published a proposed rule for Amendment 32 on November 2, 2011 and requested public comment (76 FR 67656). During the comment period for the proposed rule published on November 2, 2011, NMFS identified an inconsistency in the regulatory text regarding the AMs for recreational gag and red grouper that needed correction. To correct this inconsistency, NMFS published a second proposed rule on January 12, 2012 (77 FR 1910), to revise the process for applying overage adjustments in the recreational AMs for gag and red grouper. Each of the proposed rules and Amendment 32 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management measures implemented through this final rule adjust the commercial gag quota and recreational ACT for 2012 through 2015 and subsequent fishing years, consistent with the gag rebuilding plan established in Amendment 32; adjust the SWG quota; adjust the commercial and recreational sector's ACLs for gag and red grouper; adjust the commercial ACL for SWG; establish a formula-based method for setting gag and red grouper multi-use allocation for the grouper/tilefish IFQ program in the Gulf; set the recreational gag fishing season from July 1 through October 31; reduce the gag commercial size limit to 22 inches (59 cm) TL; modify the gag and red grouper AMs; and revise the process for applying overage adjustments in the recreational AMs for gag and red grouper.

Comments and Responses

NMFS received 26 comment letters with a total of 13 separate comments on Amendment 32 and the two proposed rules. Five of the comments were on the second proposed rule. Comments were received from both individuals and organizations. Comments from two non-governmental organizations (NGOs) supported most of the management measures contained in the first proposed rule. One Federal agency indicated they had no comments on Amendment 32 or the rule. Three of the comments on the second proposed rule did not specifically address the proposed revision to the overage adjustment for the recreational gag and red grouper AMs contained in the second proposed rule. Comments related to the actions contained in the amendment or the proposed rules are summarized and responded to below.

Comment 1: Alternative gag recreational seasons, beyond the proposed season of July 1 through October 31, should be considered. Gag recreational seasons suggested were a fall/winter season, a spring and a winter season, a summer season synchronized with other species such as red snapper, and a 6-month season. Also suggested was reducing the gag bag limit to one fish.

Response: The Council selected the July 1 through October 31 season because it sets the longest fishing season that is consistent with the reductions

needed to adhere to the 10-year rebuilding plan. This decision was based on public testimony with many preferring a summer/fall season. The Council did consider other seasons including a fall season and a split winter and spring season. The reason the Council did not select these alternatives is that catch rates are much higher at these times and would only allow for an approximate 60-day season under the assumptions used to model season length.

The Council did initially consider a one-fish bag limit during the development of Amendment 32. However, this was discounted because the gains in season length were minimal (generally less than 15 days). A small gain in season length relative to the reduction in the bag limit from two to one is due to the fact that many fishermen do not catch their bag limit under the current two-fish bag limit. If all fishermen were to return with their bag limit, then gains in the season length from reducing the bag limit would be much greater.

Comment 2: The proposed gag recreational season is not conservative enough to constrain harvests to the ACT.

Response: The gag recreational season allows for total gag removals to be reduced sufficiently to end overfishing and allow the stock to rebuild within the 10-year rebuilding plan. Two baselines were considered to determine the range of effects of different management measures. Under the 2009 baseline, lower reductions are needed and under the 2006–2008 baseline, higher reductions are needed. The July 1 through October 31 fishing season is sufficient to achieve target harvest levels (yields based on the fishing mortality rate associated with harvesting OY) under the 2009 baseline and achieve rebuilding targets (yields based on the fishing mortality rate needed to rebuild the stock in 10 years) under the 2006–2008 baseline. In evaluating alternative management measures, the Council selected a strategy within the range provided by the baselines, namely the July 1 through October 31 gag recreational season that balances the ability for the stock to recover while minimizing adverse effects on the recreational sector. These reductions also assume that gag fishing effort will increase by 50 percent during the recreational fishing season compared to past years when the season was longer. The Council did consider that a doubling of fishing effort could occur, but determined this possibility overestimated effort shifting. Should the effort increase be greater than 50 percent and the ACL is exceeded, then recreational AMs would be triggered and mitigate the effects of the overage.

Comment 3: Gag populations appear to be abundant, bringing into question the data used for the stock assessment.

Response: The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing, and achieve, on a continuing basis, the OY from federally managed fish stocks. In addition, the Magnuson-Stevens Act requires fishery managers to specify their strategy for rebuilding overfished stocks to a sustainable level within a certain time frame. The most recent stock assessment of gag indicated the stock was overfished and undergoing overfishing. Therefore, a rebuilding plan for gag is required. The gag rebuilding plan specifies annual harvest levels and management measures implemented through Amendment 32 must constrain harvest to these levels.

Stock assessments are conducted under the scientifically peer-reviewed Southeast Data, Assessment, and Review (SEDAR) process, which was initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. SEDAR seeks improvements in the scientific quality of stock assessments and supporting information available to address existing and emerging fishery management issues. This process emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. SEDAR is organized around three workshops. First, the data workshop documents, analyzes, and reviews the data sets to be used for assessment analyses. Second, the assessment workshop develops and refines quantitative population analyses and estimates population parameters. The final workshop is conducted by a panel of independent experts who review the data and the assessment and recommend the most appropriate values of critical population and management quantities. The 2006 gag assessment, 2009 update assessment, and 2010 assessment reruns were conducted within the SEDAR process. The 2010 assessment reruns were performed to better account for discarded fish. These assessments were used to assist in developing the management measures contained in Amendment 32. All workshops and Council-initiated meetings to review the assessment were open to the public and included constituent participation on the various SEDAR panels to ensure the transparency of the data and how it was applied in the assessments. In addition, the Council's Scientific and Statistical Committee (SSC) reviewed assessment results and made recommendations to the Council about the adequacy of the assessments and the acceptable biological catch. The Council took all of this information into consideration when selecting preferred alternatives in Amendment 32.

Comment 4: Regionalized gag management should be considered to allow a greater proportion of the gag harvest to occur in areas where gag are more abundant.

Response: Considering regionalized management with measures such as seasonal closures, bag limits, and size limits is outside the scope of this rulemaking because such an approach would not directly reduce overfishing. However, the Council has examined regionalized management for reef fish species such as gray triggerfish and red snapper. One impediment to developing regionalized management measures is that fine scale geographic data are needed to evaluate the effects of the measures. These data are not available at this time; however, NMFS is working to improve data collection efforts so regionalized management may be an option in the future.

In the course of developing long-term management measures in Amendment 32, the Council did consider seasonal-area closures for grouper species. This is a type of regionalized management. However, the Council did not select seasonal-area closures for gag in Amendment 32 because of potential adverse social and economic impacts and they were not necessary to rebuild the stock.

Comment 5: Gag should be included in multi-species bag limits and seasons so that fishermen have the opportunity to harvest a variety of fish species. Species suggested for a multi-species bag limit for gag and other grouper include red snapper and greater amberjack.

Response: Although the Council did not consider changing the existing multi-species bag limits, the Council did consider the fishing seasons for other targeted species when selecting the gag seasonal closure. Part of the rationale for selecting a gag summer season is that it may overlap with the red snapper season, which begins on June 1 each year. The Council also considered public testimony, which was not in favor of multi-species seasons. For-hire operators desire to have some targeted species available for harvest year-round

so that they can market trips to their customers.

Comment 6: The amount of area closed should be increased to protect gag during their spawning season and to reduce gag bycatch.

Response: The Council decided not to add any new area closures in Amendment 32 because it determined that a new area closure could result in more negative social and economic impacts than measurable biological benefits. As described in Amendment 32, closing a particular area can provide biological and ecological benefits. However, because of effort shifting outside the closed area, these benefits are difficult to quantify. In general, closing a fishing area, particularly a large fishing area, remains controversial. The Council received many negative comments regarding additional closed areas because of issues such as effort shifting and inter-sector competition.

Comment 7: The commercial minimum size limit for gag should not be reduced and more research should be conducted on the consequence of reducing the minimum size limit for gag before implementing a reduction.

Response: As described in Amendment 32, grouper minimum size limits are the greatest factor contributing to bycatch of SWG species. Size limits are intended to protect immature fish and reduce fishing mortality. For gag, yield-per-recruit analyses were conducted through the SEDAR process to identify the sizes that best balance the benefits of harvesting fish at larger sizes against losses due to natural mortality. The gag size where the yield-per-recruit was maximized was less than the proposed commercial minimum size limit of 22 inches (55.9 cm), TL, and the current recreational minimum size limit of 22 inches (55.9 cm), TL. Although decreasing the minimum size limit for either commercial or recreational gag positively benefits yield-per-recruit and reduces bycatch, it also negatively affects spawning potential. However, the Council determined the reduced minimum size limit will likely provide a net positive benefit to the stock, and delaying taking such action would be detrimental to the health of the stock.

Comment 8: The trigger for activating recreational inseason AMs should be the more precautionary ACT rather than the higher ACL.

Response: The Magnuson-Stevens Act requires that ACLs be implemented for each fishery and measures to ensure accountability. The Magnuson-Stevens Act does not require ACTs. The National Standards 1 guidelines (74 FR 3178, January 16, 2009), state that when an ACL is exceeded or projected to be exceeded, then AMs should be implemented to ''correct or mitigate the overage.'' NMFS' guidance views ACTs as a type of AM, particularly in the case of stocks or sectors that do not have inseason AMs. The ACT, which is usually set below the ACL, acts as a buffer. This is because managing a stock or sector at the ACT, or lower harvest level, reduces the probability that the ACL will be exceeded.

Amendment 32 proposes inseason AMs for recreational gag and red grouper that close the recreational sector if an ACL is projected to be exceeded or is exceeded within that fishing year. Therefore, in the case of gag and red grouper, ACTs are not necessary. However, as an added precaution, gag and red grouper recreational management measures are based on fishing at F_{OY} (the ACT level) which is below the fishing mortality rate (F) associated with the ACL. Given this additional level of protection, the Council and NMFS determined that it was not necessary to set the AM trigger at the ACT level.

Amendment 32 also provides additional protection for recreational gag and red grouper under the revisions to the AMs. If the gag or red grouper recreational ACL is exceeded, and gag or red grouper are overfished, then an overage adjustment would be applied, further reducing the subsequent year's recreational ACL and reducing the gag or red grouper recreational fishing season by the amount necessary to ensure gag or red grouper recreational landings do not exceed the recreational ACT in the following fishing year.

Comment 9: The gag stock should be rebuilt in 7 years as opposed to the proposed 10-year rebuilding plan.

Response: As mentioned in Amendment 32, the management measures set by the Council for the recreational and commercial sectors should rebuild the stock within 7 years. However, given management uncertainties and uncertainties regarding stock assessment projections more than a few years in the future, the Council selected a 10-year rebuilding plan. This longer time frame allows for fluctuations in catches and provides fishing communities with greater socioeconomic benefits.

Comment 10: More restrictive measures should be applied to the gag commercial sector. These include reducing the commercial quota so more fish are available to the recreational sector, restricting the commercial sector to deeper waters to fish, and restricting the commercial sector to gag fishing only when the recreational sector is open.

Response: Revising commercial and recreational sector allocations is beyond the scope of Amendment 32 and this rulemaking. Amendment 30B to the FMP set the current allocation of 39 percent commercial and 61 percent recreational. This allocation may be revised as the Council develops Amendment 28 to the FMP to address grouper allocations.

With regards to moving the commercial sector to deeper waters, the Council did not consider this action in Amendment 32. However, some commercial operators are already required to fish farther offshore than recreational anglers. Recent regulations restrict longline vessels to deeper waters for a portion of the year to reduce the number of incidental sea turtle captures. These measures prohibit the use of bottom longline gear shoreward of a line approximating the 35-fathom depth contour from June through August. For the remainder of the year, bottom longlines are prohibited inside a line approximating the 20-fathom depth contour.

The commercial sector is not subject to seasonal restrictions because it is managed under an IFQ program. In this program, individual fishermen are given an allocation of gag based on the commercial quota and the number of IFQ shares owned by the fisherman. This individual allocation allows commercial fishermen more flexibility in how they can fish, including fishing year-round if they still have allocation remaining. If the commercial sector was not allowed to keep gag when the recreational sector was closed, dead discards of gag would increase. This is because gag would be incidentally caught as commercial fishermen target other species. The likelihood these incidentally caught fish would survive is lower than for the recreational sector because the commercial sector generally fishes at greater depths. Therefore, by allowing the commercial sector to keep gag year-round if an individual fisherman still has allocation, any gag above the minimum size limit are counted towards the quota and not wasted.

Comment 11: Taking final action on the commercial minimum size limit for gag was in violation of the Magnuson-Stevens Act because the SSC did not review ''all proposed management actions'' in the development of Amendment 32.

Response: Section 302(g)(1)(A) of the Magnuson-Stevens Act states, ''Each Council shall establish, maintain, and appoint the members of a scientific and statistical committee to assist it in the development, collection, evaluation,

and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.'' As part of the development of Amendment 32, the SSC reviewed and accepted both the SEDAR gag benchmark assessment and 2009 assessment update. These assessments provided the data for the biological and economic analyses contained in Amendment 32. Therefore, the SSC did review the relevant scientific information needed to develop the amendment. Although the SSC might have provided some additional insight if they had reviewed all the actions in Amendment 32, there is no obligation under the Magnuson-Stevens Act for this review. Specific to the action to reduce the gag commercial minimum size limit, the data used in assessing the effects of changing the minimum size limit came directly from the 2009 update assessment and subsequent reruns of this update assessment, which were accepted by the SSC. Further, the minimum size limit analysis was determined by NMFS to be based upon the best scientific information available.

Comment 12: Economic analyses are not representative of individual charter vessel operators and so individual estimates of net operating revenues (NOR) due to gag management measures are underestimated.

Response: Analyses used to evaluate the economic impacts of the management measures are based on the average performance of affected charter vessels. Therefore, the analyses are not intended to be representative of particular for-hire vessels that target gag. A more complete discussion of this comment can be found in the Classification section of this rule.

Comment 13: The economic impacts of the gag management measures are underestimated because the estimates of the percentage of trips by for-hire anglers that target gag in the Gulf used to evaluate performance of for-hire vessels are too low and not representative of individual charter vessel operators.

Response: The dependence of fishing for individual species such as gag by specific for-hire vessels cannot be determined with available data. Some for-hire vessels, as described in the IRFA, are likely more dependent on trips that target gag than other for-hire vessels. Thus, NMFS agrees that the economic impact of the management measures for vessels that are highly dependent on targeting gag is greater than those that do not. However, the economic analyses looked at for-hire vessels in general and are not specific to particular vessels (a more complete discussion of this comment can be found in the Classification section of this rule). It should be noted that the Council did account for some effort shifting by the recreational sector during the months that recreational fishing for gag occurs. During these months, the number of trips targeting gag will likely increase and the dependence of for-hire vessels on gag fishing will also likely increase. The Council considered three effort shifting scenarios and concluded that doubling of effort was too high an assumption. Accordingly, the Council chose to assume a 1.5 effort shift for the purpose of evaluating the alternatives but also recognized that the full range of projected effort shifting should be taken into consideration because an exact number could not be predicted.

Changes From the Proposed Rule

NMFS revised the regulatory text of the proposed rule in this final rule in several places. In § 622.20, NMFS renumbered the paragraphs because a final rule implementing revisions to the Gulf red snapper and Gulf grouper/tilefish IFQ programs, that published November 4, 2011 (76 FR 68339), reorganized and renumbered the paragraphs in § 622.20. The revision to § 622.39, contained in the proposed rule was removed in this final rule because a final rule to implement a red grouper regulatory amendment published November 2, 2011 (76 FR 67618), revised the bag limit for red grouper; therefore, no change to this section is necessary. In § 622.49, the amendatory instruction was revised to reflect that the heading for § 622.49 was revised in a final rule implementing the Generic ACLs/AMs Amendment for the Gulf (Generic ACL Amendment) (76 FR 66021, October 25, 2011). Also in § 622.49, NMFS amended the term ''target catch level'' to read ''annual catch target'' or ''ACT'', which is the language used in Amendment 32, and which is consistent with the language used in the regulatory text for other Gulf and South Atlantic species with ACLs, AMs, and target catches. NMFS also clarified the regulatory text in § 622.49 by adding the term ''of this section'' when citing sections of 50 CFR part 622.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this rule and Amendment 32 are necessary for the conservation and management of the reef fish fishery and are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

As required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), NMFS prepared a final regulatory flexibility analysis (FRFA) for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. The preamble of the proposed rule and this rule provide a statement of the need for and objectives of this rule, and it is not repeated here.

Two public comments provided by one commenter raised issues related to the IRFA. The first comment claims that the $2,000 estimate of the average annual NOR per charter vessel from trips targeting gag is arbitrary and capricious because it is not representative of the commenter's charter vessel's operations. The commenter indicates that his vessel operates in state waters, specializes in the harvest of gag, and thus gag is responsible for a significant portion of his business. As the IRFA states, the $2,000 is an estimate of the average NOR per charter vessel from trips targeting gag and is therefore not intended to be representative of all charter vessels that target gag. The commenter's description of his operation suggests his charter vessel is above average with respect to the NOR generated from trips targeting gag. As such, NMFS agrees that the NOR estimate is not representative of the commenter's charter vessel operation. However, based on the available data, the $2,000 estimate of NOR per charter vessel is accurate on average and thus NMFS disagrees it is arbitrary and capricious.

The second comment from this commenter questions NMFS' estimate that 3 percent of for-hire angler trips in the Gulf target gag and, specifically, asserts the estimate is too low. The commenter indicates that 65–70 percent of his charter vessel's customers target gag and suggests that estimate applies to other for-hire vessels on the west coast of Florida. As stated in the IRFA, for-hire vessel dependence on fishing for individual species such as gag cannot be determined with available data. Further,

the IRFA indicates that some for-hire vessels are likely more dependent on trips that target gag than other for-hire vessels. Thus, NMFS agrees that the commenter's charter vessel operation is very dependent on trips that target gag based on the information provided by the commenter. However, given available data, it is unknown whether the commenter's estimate applies to many other for-hire charter vessel operations on the west coast of Florida. Further, the comment is not contrary to NMFS' estimate that 3 percent of all for-hire angler trips target gag. For these reasons, no changes were made to the proposed rule as a result of these comments.

This rule is expected to directly affect commercial harvesting and for-hire operations. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is $7 million (NAICS code 713990, recreational industries).

This rule is expected to directly affect commercial fishing vessels whose owners possess gag or red grouper fishing quota shares and for-hire fishing vessels that harvest gag. As of October 1, 2009, 970 entities owned a valid commercial Gulf reef fish permit and thus were eligible for initial shares and allocation in the grouper and tilefish IFQ program. Of these 970 entities, 908 entities initially received shares and allocation of grouper or tilefish, and 875 entities specifically received gag shares and an initial allocation of the commercial sector's gag quota in 2010. These 875 entities are expected to be directly affected by the actions to reduce the gag commercial quota to 86 percent of the ACT to account for dead discards, modify the percentages of red grouper and gag allocation that can be converted into multi-use allocation, and reduce the commercial size limit for gag. Of these 875 entities, 815 also received red grouper shares and an initial allocation of the commercial sector's red grouper quota in 2010.

Of the 875 entities that initially received gag shares, 215 were not commercially fishing in 2008 or 2009 and thus had no commercial fishing revenue during these years. On average, these 215 entities received an initial allocation of 874 lb (397 kg) of gag in 2010. Eight of these 215 entities also received a bottom longline endorsement in 2010. These 8 entities received a much higher initial allocation of gag in 2010, with an average of 3,139 lb (1,427 kg).

The other 660 entities that initially received gag shares and allocations in 2010 were active in commercial fisheries in 2008 or 2009. The maximum annual commercial fishing revenue in 2008 or 2009 by an individual vessel that subsequently received commercial gag fishing quota shares was approximately $606,000 (2008 dollars).

The average charterboat is estimated to earn approximately $88,000 (2008 dollars) in annual revenue, while the average headboat is estimated to earn approximately $461,000 (2008 dollars). Based on these values, all commercial and for-hire fishing vessels expected to be directly affected by this rule are determined to be small business entities for the purpose of this analysis.

Of the 660 commercial fishing vessels with commercial landings in 2008 or 2009, 139 vessels did not have any gag landings in 2008 or 2009. Their average annual gross revenue in these 2 years was approximately $50,800 (2008 dollars). The vast majority of these vessels' commercial fishing revenue is from a combination of snapper, mackerel, dolphin, and wahoo landings. On average, in 2010, these vessels received an initial allocation of 540 lb (245 kg) of gag quota.

The remaining 521 commercially active fishing vessels did have landings of gag in 2008 or 2009. Their average annual gross revenue from commercial fishing was approximately $71,000 (2008 dollars) between the 2 years. On average, these vessels had 2,375 lb (1,080 kg) and 1,300 lb (591 kg) of gag landings in 2008 and 2009, respectively, or 1,835 lb (834 kg) between the 2 years. Gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue, and thus they are somewhat, though not significantly, dependent on revenue from gag landings. These vessels' average initial gag allocation in 2010 was 2,121 lb (964 kg). Therefore, on average, their 2008 gag landings were very near their 2010 gag allocation, but their 2009 gag landings were considerably less than their 2010 allocation.

Of these 521 vessels, 52 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual revenue was approximately $156,000 (2008 dollars) in 2008 and 2009. Revenue from gag landings decreased from approximately $15,900 to $8,400 in 2009 and thus these vessels became relatively less dependent on gag landings. These vessels are highly dependent on revenue from red grouper landings, which accounted for 54 percent and 47 percent of their gross revenue in 2008 and 2009, respectively. Revenue from deep-water grouper (DWG) landings decreased only slightly, from approximately $36,000 in 2008 to $31,000 in 2009, and thus these vessels became relatively more dependent on revenue from DWG landings. Their average initial 2010 allocation of gag was approximately 5,507 lb (2,503 kg) while their average gag landings were 3,933 lb (1,788 kg) and 2,204 lb (1,002 kg) in 2008 and 2009, respectively. Thus, vessels that now have a bottom longline endorsement have harvested less than that allocation in recent years, particularly in 2009.

The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The harvest of gag in the exclusive economic zone (EEZ) by for-hire vessels requires a charter vessel/headboat permit for Gulf reef fish. On March 23, 2010, there were 1,376 valid or renewable for-hire Gulf reef fish permits. A valid permit is a non-expired permit. Expired reef fish for-hire permits may not be actively fished, but are renewable for up to 1 year after expiration. Because of the extended permit renewal period, numerous permits may be expired but still renewable at any given time of the year during the renewal period after the permit's expiration. The majority (823, or approximately 60 percent) of the 1,376 valid or renewable permits were registered with Florida addresses. The registration address for the Federal permit does not restrict operation to Federal waters off that state; however, vessels would be subject to any applicable state permitting requirements. Although the permit does not distinguish between headboats and charter vessels, it is estimated that 79 headboats operate in the Gulf. The majority of these vessels (43, or approximately 54 percent) operate from Florida ports. Given that nearly 99 percent of target effort for gag and 97 percent of the economic impacts from the recreational sector for gag in the Gulf reef fish fishery are in west Florida, it is assumed that the 823 for-hire vessels (780 charter vessels and 43 headboats) in Florida are expected to be directly affected by the action to

establish a recreational gag fishing season of July 1 through October 31.

Establishing a rebuilding plan for gag is an administrative action and is therefore not expected to generate direct, adverse economic effects on commercial or for-hire entities. Thus, the action to establish a rebuilding plan for gag that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less is not expected to reduce profits for commercial or for-hire entities.

NOR are assumed to be representative of profit for for-hire vessels. It is assumed that 823 for-hire vessels (780 charter vessels and 43 headboats) participate in the recreational gag component of the Gulf reef fish fishery. Estimates of NOR from recreational fisheries other than gag, and thus across all fisheries in which these charter vessels and headboats participate, are not currently available. However, on average, NOR for charter vessels from trips targeting gag are estimated to be approximately $1.56 million per year while NOR for headboats from trips targeting gag are estimated to be $91,300 per year. NOR for all trips targeting gag are estimated to be approximately $1.65 million per year. The average annual NOR from trips targeting gag are estimated to be $2,000 per charter vessel and $2,124 per headboat.

When the length of the recreational gag season is reduced and the daily bag limit for gag set at zero, some trips that formerly targeted gag will instead target other species while other trips that formerly targeted gag will be cancelled. Assuming the NOR per trip is constant regardless of the species targeted, for-hire operators will only lose NOR from trips cancelled as a result of the shortened season length. Information regarding the number of trips cancelled as a result of the shortened season is not currently available. Thus, this analysis assumes all of the current for-hire trips targeting gag will be cancelled when the recreational sector is closed. Because some of these trips would probably not be cancelled, this assumption is expected to overestimate the actual reduction in NOR associated with a shorter season. Thus, the following estimates of losses in NOR and profit for charter vessels and headboats should be considered maximum values.

Under the action to establish a recreational gag fishing season of July 1 through October 31, the losses in NOR from trips targeting gag for charter vessels and headboats are estimated to be approximately $1,304,000 and $76,000, respectively, and thus NOR for all trips targeting gag is estimated to be approximately $1,380,000. The average annual losses in NOR from trips targeting gag are estimated to be $1,672 and $767 per charter vessel and headboat, respectively. These NOR losses represent a loss in profit from trips targeting gag of approximately 84 percent and 36 percent per charter vessel and headboat, respectively.

The action to establish a recreational gag fishing season of July 1 through October 31 is not expected to affect profit from trips not targeting gag for charter vessels and headboats. For-hire vessel dependence on fishing for individual species cannot be determined with available data. Although some for-hire vessels are likely more dependent on trips that target gag than other for-hire vessels, overall, about 3 percent of for-hire angler trips are estimated to target gag. As a result, although the action would be expected to substantially affect the NOR derived from gag trips, overall, gag trips do not comprise a substantial portion of total for-hire trips nor would they, by extension, be expected to account for a substantial portion of total for-hire NOR.

For the action to increase the recreational bag limit for red grouper from two fish to four fish, the number of trips in all recreational fishing modes is assumed to remain the same regardless of any change in the red grouper bag limit. As such, no changes to producer surplus in the for-hire sector are expected. Thus, the action is not expected to reduce profits for for-hire entities.

The 215 entities with gag shares that did not participate in commercial fishing in 2008 or 2009 have no commercial fishing revenue and did not earn profit from commercial fishing in those 2 years. For the action to reduce the commercial gag quota to 86 percent of the ACT to account for dead discards, their average allocation of gag in 2012 would be reduced from 421 lb (191 kg) to 362 lb (165 kg), or by approximately 59 lb (27 kg). Using the average 2008 price of $3.52 per lb, this loss in allocation could potentially represent a loss of nearly $208 (2008 dollars) in gross revenue per entity. Using the 2010 average price of $1.00 per lb of gag allocation, this loss in allocation could potentially represent a loss of $59 (2008 dollars) in net revenue per entity. For 8 of these 215 entities that also possess longline endorsements, their average allocation of gag in 2012 would be reduced from 1,512 lb (687 kg) to 1,300 lb (591 kg), or by 212 lb (96 kg). Thus, their potential losses in gross revenue and net revenue, estimated to be $746 and $212 (2008 dollars), respectively, are expected to be somewhat higher.

However, in general, these potential losses in gross revenue and net revenue would only be realized if these 215 entities not only become active in commercial fishing but also specifically intend to harvest gag in 2012 and at a level greater than their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings, and thus gross revenue, if these entities intend to harvest at levels greater than their reduced allocation. Alternatively, these losses in gross and net revenue could be due to these entities' inability to sell the allocations they are losing from the action, though this possibility presumes that a demand for these allocations exists. Regardless, the significance of these potential losses in gross and net revenue to these 215 entities cannot be evaluated given the lack of information on potential gross revenue, net revenue, and profits from commercial fishing in general and specifically for gag.

Similarly, for the 139 entities with gag shares that participated in commercial fisheries other than gag, they earned approximately $50,800 in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, because they did not have any gag landings, none of their gross revenue and thus none of their potential profits were the result of gag harvests. Under the action to reduce the commercial gag quota to 86 percent of the ACT to account for dead discards, their average allocation of gag in 2012 would be reduced from 260 lb (118 kg) to 224 lb (102 kg), or by 36 lb (16 kg). Using the average 2008 price of $3.52 per lb, this loss in allocation could potentially represent a loss of $127 (2008 dollars) in gross revenue per entity. Using the 2010 average price of $1.00 per lb of gag allocation, this loss in allocation could potentially represent a loss of approximately $36 (2008 dollars) in net revenue per entity.

However, these potential losses in gross and net revenue could only lead to a loss in profits if these 139 entities intend to commercially harvest gag in 2012 and at a level above their reduced allocation. That is, a reduction in allocation can only lead to a reduction in landings if these entities intend to harvest at levels above their reduced allocation. Thus, for example, if these vessels intended to harvest gag in 2012 at a level equivalent to their 2012 allocation, and this harvest was in addition to, rather than in place of, their recent commercial fishing activities, the reduction in allocation could lead to a maximum loss of approximately 0.3 percent in gross revenue, which could

in turn reduce net revenue and profits. Alternatively, losses in gross and net revenue could be due to these entities' inability to sell the allocations being lost from this action, though this possibility presumes that a demand for these allocations exists.

For the 521 entities with gag shares that commercially harvested gag in 2008 or 2009, they earned approximately $71,000 (2008 dollars) in annual gross revenue on average in 2008 and 2009. Profit estimates for these vessels are not currently available. However, gag landings accounted for approximately 8 percent of these vessels' annual average gross revenue, and thus they are somewhat but not significantly dependent on revenue from gag landings. For the action to reduce the commercial gag quota to account for dead discards, these vessels' 2012 gag allocations would be reduced from 1,022 lb (465 kg) to 879 lb (400 kg), or 143 lb (65 lb) on average. As these vessels have been harvesting at levels near their 2010 allocation in recent years on average, this reduction in gag allocation is likely to lead to an equivalent reduction in gag landings and therefore gross revenue. Using the average 2008 price of $3.52 per lb, it is estimated that these vessels could lose nearly $143 (2008 dollars), or approximately 0.7 percent, in annual gross revenue on average. Using the 2010 average price of $1.00 per lb of gag allocation, this loss in allocation would represent a loss of $143 (2008 dollars) in net revenue per entity. Because net revenue is assumed to be representative of profits for commercial vessels, these vessels are expected to experience a reduction in profits.

However, 52 of these 521 vessels also received a bottom longline endorsement in 2010. These particular vessels' average annual gross revenue was approximately $156,000 (2008 dollars) in 2008 and 2009, with gag landings accounting for approximately 8 percent of that gross revenue. These vessels are highly dependent on revenue from red grouper rather than gag landings. For the action to reduce the commercial gag quota, their allocation of gag in 2012 would decrease from 2,749 lb (1,250 kg) to 2,364 lb (1,075 kg), or by 385 lb (175 kg). As these vessels have harvested at average levels near their 2010 allocation in recent years, this reduction in gag allocation is likely to lead to an equivalent reduction in gag landings and therefore gross revenue. Using the average 2008 price of $3.52 per lb, it is estimated that these vessels could lose $385 (2008 dollars), or approximately 0.9 percent, in annual gross revenue on average. Using the 2010 average price of $1.00 per lb of gag allocation, this loss in allocation would represent a loss of approximately $385 (2008 dollars) in net revenue per entity. Because net revenue is assumed to be representative of profits for commercial vessels, these vessels are expected to experience a reduction in profits.

No additional economic effects would be expected to result from the revised SWG quota because the updated SWG quota simply reflects the reduction in the commercial gag quota, the effects of which have already been discussed.

Given the action to establish a rebuilding plan for gag, the conversion of red grouper allocation into multi-use allocation valid toward the harvest of red grouper or gag would be suspended under the action to modify the percentages of red grouper and gag allocation that can be converted into multi-use allocation. Because red grouper is not under a rebuilding plan at this time, gag shareholders would be allowed to convert 8 percent of their gag allocation into multi-use allocation and thus no adverse economic effects are expected. However, minimal adverse economic effects are expected as a result of commercial fishing entities not being allowed to convert 4 percent of their red grouper allocation into multi-use allocation. Multi-use allocation that has been converted from red grouper allocation can only be used to possess, land, or sell gag after an entity's gag and gag multi-use allocation has been landed, sold, or transferred. Given the action to reduce the commercial gag quota due to dead discards, it is possible these entities will exhaust their gag and gag multi-use allocations. Gross revenue from gag landings is greater than gross revenue from an equivalent amount of red grouper landings because gag commands a relatively higher market price. Thus, gross revenue from commercial fishing and therefore profits per vessel could be slightly lower than if the conversion were allowed to continue.

For the action to reduce the commercial size limit for gag from 24 inches (61 cm) to 22 inches (56 cm) total length, commercial fishing entities would be allowed to retain more and discard less of the gag they catch and thus are expected to experience increased economic benefits relative to the status quo. However, if commercial fishermen prefer to harvest larger gag due to a higher market demand for larger fish, then additional high-grading may be possible because the commercial sector is managed under the IFQ program. As such, few additional gag may be retained and thus the potential increases in gross revenue, net revenue, and profits per vessel are likely minimal.

Establishing AMs is an administrative action and is therefore not expected to generate direct, adverse economic effects on commercial or for-hire entities. Direct, adverse economic effects would only occur if and when the AMs are actually triggered. This action would replace current AMs established in Amendment 30B to the FMP with the current IFQ program because an IFQ functions as an AM. This action would also add an overage adjustment and an in-season closure to the current AMs for the recreational sector when the gag or red grouper stocks are overfished and in a rebuilding plan. Because red grouper is not overfished or in a rebuilding plan, this action does not currently apply to the red grouper component of the reef fish fishery. The action to establish a recreational fishing season of July 1 through October 31 for gag is expected to restrain landings in the gag recreational sector well below its 2012 ACL, and in fact is intended and expected to constrain landings below the 2012 recreational ACT. In turn, the probability an overage adjustment or in-season closure will be required in 2013 is also minimal. Thus, the action to establish new AMs for the commercial and recreational sectors of the gag, red grouper, and SWG component of the Gulf reef fish fishery is not expected to reduce profits for commercial or for-hire entities.

Three alternatives, including the status quo, were considered for the action to establish a rebuilding plan for gag that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less. In the absence of all fishing mortality, including bycatch mortality, the shortest possible time in which the gag stock can rebuild is 5 years. Under the Magnuson-Stevens Act, the maximum time allowed for rebuilding the gag stock is 10 years. In the Generic ACL Amendment, the ACLs are based on yields that are projected to rebuild the stock in 10 years, and the ACTs are based on yields that are projected to rebuild the stock in 7 years.

The first alternative, the status quo, would not have established a rebuilding plan for gag. The fishing mortality rate for gag has shown an increasing trend over time and fishing mortality rates in recent years are not consistent with rebuilding or maintaining the gag stock at its maximum sustainable yield level. Moreover, because the gag stock has been determined to be overfished and undergoing overfishing, this alternative

does not comply with the Magnuson-Stevens Act.

The second alternative would have established a rebuilding plan that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 7 years or less. Seven years is the estimated time to rebuild if the stock is managed at a fishing rate corresponding to OY (F_{OY}) rather than the rate corresponding to a 10-year rebuilding plan ($F_{rebuilding}$). Although the yields under a 7-year rebuilding plan would eventually catch up to those for a 10-year plan, the initial catch targets in the early years would be less during a 7-year rebuilding plan relative to a 10-year rebuilding plan. Thus, this alternative would potentially imply more restrictive regulations and thus more adverse indirect economic effects in the short-term relative to rebuilding the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less.

The third alternative would have established a rebuilding plan that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 5 years. If this alternative were adopted, strong measures to reduce bycatch of gag in other fisheries would also need to be considered. Because a total elimination of discard mortality is unlikely to be achieved, this alternative would likely result in the stock being slightly under the rebuilding target at the end of 5 years. Most importantly, this alternative would require a complete closure of the gag component of the Gulf reef fish fishery for at least 5 years. Therefore, this alternative would eliminate all net revenue from the commercial sector and all consumer and producer surplus from the recreational sector for at least 5 years and, as such, would lead to the most restrictive regulations and, thus, considerably greater adverse indirect economic effects in the short-term relative to rebuilding the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less.

Four alternatives, including the status quo, were considered for the action to establish a recreational gag fishing season of July 1 through October 31. The first alternative, the status quo, would maintain a year-round gag recreational fishing season, with the exception of the current February 1 to March 31 closed season for SWG. This alternative would be expected to result in a 14 percent reduction in gag removals relative to the 2006–2008 baseline and a 1 percent increase in gag removals relative to the 2009 baseline. As such, this alternative does not achieve the necessary reduction in removals to rebuild the gag stock, contrary to the Council's goals and objectives and the Magnuson-Stevens Act.

The second alternative, which would establish a gag recreational season of September 16 through November 15, would reduce gag removals by 60 percent relative to the 2009 baseline, which exceeds the ACT reduction of 47 percent. Relative to the 2006–2008 baseline, this alternative also reduces removals by 60 percent. Therefore, this alternative does not fully meet the ACT of 61 percent relative to the 2006–2008 baseline, but does exceed the ACL and rebuilding yield reduction level of 53 percent. This alternative is more conservative biologically than the preferred alternative, but only allows a 61-day fishing season as opposed to the 123-day fishing season allowed during a recreational gag fishing season of July 1 to October 31.

The third alternative, which would establish a gag recreational season of January and April, would reduce removals by 52 percent, which exceeds the ACT reduction of 47 percent. Relative to the 2006–2008 baseline, this alternative reduces removals by 56 percent. This alternative does not fully meet the ACT of 61 percent relative to the 2006–2008 baseline, but it does exceed the ACL and rebuilding yield reduction level of 53 percent. This alternative is similar to the second alterative in that it allows 61 days of fishing, and thus is shorter than the 123-day fishing season allowed under a recreational gag fishing season of July 1 through October 31, but it splits the season into two segments to provide more fishing opportunities. Biologically, this alternative is as conservative as the action.

The fourth alternative would also establish a gag recreational season of July 1 through October 31 as the action. However, rather than maintain the current 22 inch (56 cm) recreational minimum size limit, it would implement a 22–30 inch (56–76 cm) slot limit. Although this alternative would achieve a larger reduction in removals, a larger percentage of those removals would consist of dead discards. Further, a portion of those additional dead discards would consist of larger fish above the slot limit. These larger fish produce more eggs in spawning season. Thus, this alternative could negatively impact the spawning potential ratio and in turn the rate of rebuilding.

Two alternatives, including the status quo, were considered for the action to increase the recreational bag limit for red grouper from two fish to four fish, reducing it by one fish in the subsequent year if the recreational ACL is exceeded. The first alternative, the status quo, would retain the current recreational bag limit for red grouper of two fish. The recreational ACL for red grouper has not been met in recent years. Recreational red grouper landings averaged less than 1 million lb (454,545 kg) between 2006 and 2009. Further, the recreational ACL was recently increased from 1.51 million lb (686,364 kg) to 1.72 million lb (781,818 kg) in the final rule to implement a Gulf red grouper regulatory amendment (76 FR 67618, November 2, 2011), which would create a larger difference between the ACL and the expected catch in 2012. Additional increases in the red grouper recreational ACL are planned through 2016. This alternative would not allow for-hire entities to increase their landings per trip even though the recreational sector's harvest has been and is expected to be well below its allocation. As such, opportunities to increase the economic value of red grouper harvests in the recreational sector would be unnecessarily foregone.

The second alternative would increase the recreational bag limit for red grouper from two fish to three fish. This alternative would allow for-hire entities to increase their landings per trip, but would not enhance their opportunities to increase the economic value of red grouper harvests to the same extent as increasing the recreational bag limit for red grouper to four fish. Such opportunities should be enhanced as much as possible given the large difference between the recreational sector's ACL and the expected catch according to the current bag limit. Like the action's preferred alternative to increase the recreational bag limit for red grouper from two fish to four fish, this alternative includes an adaptive feedback mechanism that would adjust the bag limit if the recreational sector exceeds its ACL, though it would not be a two-stage process.

Two alternatives, including the status quo, were considered for the action to reduce the gag commercial quota to 86 percent of the ACT to account for dead discards. The first alternative, the status quo, would not adjust the gag commercial quota to account for dead discards. This alternative would set the gag commercial quota at the current ACT. The ACT assumes dead discards in the commercial sector will be reduced by the same proportion as landings. If this assumption is not valid, then total removals of gag will exceed the harvest levels projected in the assessment. The ACT provides a buffer against reaching the ACL, but this buffer

may not be sufficient to offset increased removals due to dead discards.

The second alternative would reduce the gag commercial quota to 47 percent of the ACT to account for dead discards. This alternative represents the worst case scenario, under which dead discards are assumed to remain at their 2006–2008 level. Analyses associated with the 2011 gag interim rule indicated that, if dead discards remain at their 2006–2008 levels, the gag commercial quota would need to be reduced to 47 percent of the ACT in order to compensate for the increased removals. Although this alternative would provide the greatest allowance for dead discards and, thus, the highest likelihood of rebuilding the gag stock successfully, it is based on the unlikely assumption that dead discards will remain at their 2006–2008 levels. Longline vessels have historically landed about 34 percent of the commercial gag harvest. As a result of the longline endorsement requirements implemented in 2010, the number of reef fish longline vessels has decreased substantially. Of the 908 initial grouper/tilefish shareholders in 2010, 293 vessels used bottom longline or trap gear for commercial reef fish harvesting purposes between 1999 and 2007. However, only 62 of these vessels qualified for the bottom longline endorsement. Given the substantial reduction in the number of longline vessels, dead discards are expected to be considerably less now and in the future compared to their 2006–2008 levels. As such, reducing the gag commercial quota to 47 percent of the ACT would unnecessarily impose more significant economic and social impacts on commercial harvesters and associated communities relative to reducing the gag commercial quota to 86 percent of the ACT.

Two alternatives, including the status quo, were considered for the action to modify the percentage of red grouper allocation that can be converted into multi-use allocation if a rebuilding plan for gag is in effect. The first alternative, the status quo, would allow 4 percent of the red grouper allocation to be converted into multi-use allocation at the beginning of each year. With this alternative, the amount of red grouper multi-use allocation could exceed the available gag commercial quota, thereby leading to harvests that exceed the ACL. Such a result is contrary to the purposes of the action to establish a rebuilding plan for gag that would rebuild the gag stock to a level consistent with producing maximum sustainable yield in 10 years or less and is therefore inconsistent with the Magnuson-Stevens Act and National Standard 1 Guidance.

The second alternative would base the amount of red grouper multi-use allocation on the buffer between the gag ACL and ACT. Subsequent ACLs and ACTs may be set by the ACL/ACT control rule implemented as a result of the Generic ACL Amendment. Furthermore, the gag ACL is set at the level where there is only a 50-percent probability of meeting the target to rebuild the gag stock in 10 years or less. Thus, this alternative will reduce the probability of the rebuilding plan being successful.

One alternative, the status quo, was considered for the action to modify the percentage of gag allocation that can be converted into multi-use allocation if a rebuilding plan for red grouper is in effect. With this alternative, 8 percent of the gag allocation would be converted into multi-use allocation. If a rebuilding plan for red grouper is necessary in the future, this alternative could result in red grouper harvests that would exceed the future commercial ACL, which would in turn trigger AMs and reduce the ability of the red grouper stock to rebuild.

Three alternatives, including the status quo, were considered for the action to reduce the commercial gag minimum size limit from 24 inches (61 cm) to 22 inches (56 cm) in TL. The first alternative, the status quo, would maintain the commercial gag minimum size limit at 24 inches (61 cm) TL. The size at 50-percent female maturity is approximately 24 inches (61 cm) TL. With this alternative, regulatory discards due to the minimum size limit would continue at the current rate, which is contrary to the Council's goal of reducing gag discards.

The second alternative would reduce the commercial gag minimum size limit from 24 inches (61 cm) to 20 inches (51 cm) TL. Until a commercial fisherman's IFQ allocation is reached, this alternative is expected to reduce total gag discards by 62 percent for the vertical line component of the commercial sector and by 47.2 percent for the longline component. At the same time, the number of gag needed to fill an IFQ allocation is expected to increase by 29.7 percent for the vertical line component and by 0.9 percent for the longline component. This alternative has a greater likelihood of creating a price differential by size, which would in turn likely result in additional high-grading as fishermen attempt to maximize the economic return on their IFQ shares. Additional high-grading would lead to higher rather than lower levels of gag discards, which is contrary to the Council's goals.

The third alternative would eliminate the minimum size limit and thus would effectively require that all commercially caught gag be retained regardless of size. As a result, this alternative would also effectively require that each commercial fisherman possess sufficient gag allocation to cover all harvest of gag. Grouper sizes in the commercial sector have been recorded as small as 11 inches (28 cm) prior to the implementation of size limits, but the numbers landed are few below 18 inches (46 cm). At a minimum size limit of 18 inches (46 cm), the expected reduction in total gag discards is 79.9 percent for the vertical line component and 66.7 percent for the longline component. At the same time, the increase in number of gag needed to fill an individual's allocation of gag is expected to be 38.2 percent for the vertical line component and 1.3 percent for the longline component. At minimum size limits less than 18 inches (46 cm), these values will change little because both gears become less selective for gag at smaller sizes. To the extent a market demand for larger fish exists, this alternative is likely to create a price differential for larger size fish. Given the limited amount of gag allocation expected to be distributed with the gag commercial quota, this alternative could encourage high-grading by commercial fishermen, which would lead to higher levels of gag discards, contrary to the Council's goals.

Four alternatives, including the status quo, were considered for the action to expand the current time and area closures off the west coast of Florida. The first alternative would expand the current closed areas of Madison-Swanson and the Edges by approximately 70 square miles (181 square km). Four options were considered in this alternative. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1 through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. The percentage of gag and red grouper commercial landings coming from this area ranges from 0.55 percent for gag and 0.06 percent of red grouper with the third option to 1.25 percent and 0.39 percent for gag and red grouper, respectively, with the fourth option. These numbers indicate it is unlikely

that gag and particularly red grouper are being targeted in this area. Thus, the expected reduction in gag bycatch is relatively small and, thus, so are the biological benefits.

The second alternative would expand the current closed areas of Madison-Swanson and the Edges by approximately 244 square miles (632 square km). Four options were considered in this alternative. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1 through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. Gag bycatch is expected to increase as a result of the action to reduce the Gulf gag commercial quota and the resulting reduction in the gag to red grouper quota ratio. The percentage of gag and red grouper commercial landings coming from this area ranges from 3.23 percent for gag and 0.26 percent of red grouper in the third option to 5.92 percent and 0.93 percent for gag and red grouper, respectively, in the fourth option. If this alternative was selected, by limiting where recreational fishermen may harvest, the adverse economic and social effects incurred as a result of the July 1 through October 31 recreational fishing season would be amplified, particularly from the fourth option. Furthermore, the Council determined that these additional adverse economic and social effects on the recreational sector outweighed the biological benefits to the gag stock.

The third alternative would modify the seasonal closure dates of The Edges 40 fathom contour area, which is approximately 390 square miles (1,010 square km) in size and currently prohibits all fishing from January 1 through April 30 and allows all fishing from May 1 through December 31. Four options were also considered under this alternative. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1 through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. This alternative would close a larger area than the other alternatives that would expand the existing closures. Because The Edges 40 fathom contour area is relatively large, the percentage of gag and red grouper commercial landings coming from it is greater than under the other alternatives that would expand the existing closures, ranging from 4.13 percent for gag and 0.57 percent of red grouper for the third option to 8.92 percent and 2.41 percent for gag and red grouper, respectively. for the fourth option. Thus, the expected reduction in gag bycatch is greater than for the other alternatives that would expand the existing time area closures. If this alternative was selected, by limiting where recreational fishermen may fish, the adverse economic and social effects incurred as a result of the July 1 through October 31 recreational fishing season would be amplified, particularly from the fourth option. Furthermore, the Council determined that these additional adverse economic and social effects on the recreational sector outweighed the biological benefits to the gag stock.

The fourth alternative would modify the seasonal closure dates for the Madison Swanson and Steamboat Lumps closed areas, which cover approximately 219 square miles (567 square km). At present, these closures prohibit all fishing from November 1 through April 30, but allow surface trolling for species other than reef fish from May 1 through October 31. The first option would prohibit all fishing from November 1 through April 30, but allow surface trolling from May 1 through October 31. The second option would prohibit all fishing from November 1 through April 30, but allow all fishing from May 1 through October 31. The third option would prohibit all fishing from January 1 through April 30, but allow all fishing from May 1 through December 31. The fourth option would prohibit all fishing year-round. Because Madison Swanson and Steamboat Lumps have been closed to reef fish fishing for an extended time period, no data are available to determine how much harvesting activity may occur in these areas. As such, it is not possible to determine the potential effects from closing them for a longer time period and, thus, considerable uncertainty exists regarding those potential effects. However, it is highly likely that the biological benefits to the gag stock would be minimal at best.

One alternative, the status quo, was considered for the action to replace the current AMs for the commercial sector of gag, red grouper, and the SWG component of the Gulf reef fish fishery with the IFQ program. By retaining the current AMs, this alternative would close the commercial SWG sector if commercial landings of red grouper, gag, or SWG reach or are projected to reach their respective quotas. As such, these measures are inconsistent with the Council's management goals and objectives for the commercial sector of the Gulf reef fish fishery, as reflected by the IFQ program. Furthermore, the need for additional AMs appears to be unnecessary because commercial landings have been less than the quotas for all individual species and species complexes managed under the IFQ program.

Three alternatives, including the status quo, were considered for the action to establish additional AMs for the recreational harvest of gag and red grouper. The first alternative, the status quo, would retain the existing AMs for the recreational harvest of gag and red grouper. The current AMs do not include in-season management measures or an overage adjustment if either the gag or red grouper stocks are determined to be overfished. The gag stock is currently overfished. Thus, this alternative would allow the recreational ACLs to be exceeded before taking action, which could have short-term negative effects on the red grouper stock and particularly the gag stock.

The second alternative would add an overage adjustment to the existing AMs if gag or red grouper are determined to be overfished. This alternative would provide some benefit to the gag and red grouper stocks if they are under a rebuilding plan. Given the plan to establish a rebuilding plan for gag, this alternative would be expected to apply immediately to the gag recreational sector. If the recreational ACL is exceeded, the overage adjustment would mitigate any damage done to a stock's recovery by reducing the ACL for the following year by the size of the overage or by some other level depending on what the best available science indicates will place the stock back on its rebuilding path. However, relative to establishing additional AMs for the recreational harvest of gag and red grouper, this alternative would not allow in-season closures as a result of projections indicating the recreational sector will exceed its red grouper or gag ACL. Thus, this alternative would allow the recreational ACLs to be exceeded before taking action, which could have short-term negative effects on the red grouper stock and particularly on the gag stock.

The third alternative would add in-season AMs to the existing AMs that would allow the gag or red grouper recreational fishing seasons in the Gulf to close early if necessary. This

alternative would provide some benefit to the gag and red grouper stocks. However, this alternative does not add an overage adjustment as per National Standard 1 guidance. Moreover, by not requiring an overage adjustment, this alternative would allow overages to occur from one year to the next if the in-season closures are implemented after the ACL has been exceeded. If these overages consistently occur over time, the cumulative effect could be sufficient to preclude rebuilding if a stock is under a rebuilding plan. As such, this alternative is not as beneficial to the red grouper and gag stocks as establishing additional AMs for the recreational harvest of gag and red grouper that include an overage adjustment.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: February 7, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622, is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.20, paragraphs (a)(5)(i) and (ii) are revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) * * *

(5) * * *

(i) *Red grouper multi-use allocation.* (A) At the time the commercial quota for red grouper is distributed to IFQ shareholders, a percentage of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation, determined annually, will be based on the following formula:

Red Grouper multi-use allocation (in percent) = 100 * [Gag ACL—Gag commercial quota]/Red grouper commercial quota

(B) However, if gag is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero. Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred.

(ii) *Gag multi-use allocation.* (A) At the time the commercial quota for gag is distributed to IFQ shareholders, a percentage of each shareholder's initial gag allocation will be converted to gag multi-use allocation. Gag multi-use allocation, determined annually, will be based on the following formula:

Gag multi-use allocation (in percent) = 100 * [Red grouper ACL—Red grouper commercial quota]/Gag commercial quota

(B) However, if red grouper is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero. Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's (shareholder or allocation holder's) gag allocation has been landed and sold, or transferred; and to possess, land, or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (b)(4)(iv) of this section.

* * * * *

■ 3. In § 622.34, paragraph (v) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(v) *Seasonal closure of the recreational sector for gag.* The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through June 30 and November 1 through December 31 each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

4. In § 622.37, the heading of paragraph (d)(2)(iii) is revised and paragraph (d)(2)(v) is added to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(2) * * *

(iii) Black grouper— * * *

* * * * *

(v) Gag—22 inches (55.9 cm), TL.

* * * * *

■ 5. In § 622.42, paragraphs (a)(1)(iii)(A) and (B) and paragraph (a)(1)(vi) are revised to read as follows:

§ 622.42 Quotas.

(a) * * *

(1) * * *

(iii) * * *

(A) *SWG combined.* (*1*) For fishing year 2012—6.347 million lb (2.879 million kg).

(*2*) For fishing year 2013—6.648 million lb (3.015 million kg).

(*3*) For fishing year 2014—6.875 million lb (3.118 million kg).

(*4*) For fishing year 2015 and subsequent fishing years—7.069 million lb (3.206 million kg).

(B) *Gag.* (*1*) For fishing year 2012—0.567 million lb (0.257 million kg).

(*2*) For fishing year 2013—0.708 million lb (0.321 million kg).

(*3*) For fishing year 2014—0.835 million lb (0.378 million kg).

(*4*) For fishing year 2015 and subsequent fishing years—0.939 million lb (0.426 million kg).

* * * * *

(vi) Gray triggerfish—106,000 lb (48,081 kg), round weight.

* * * * *

■ 6. In § 622.49, the headings and first sentences of paragraphs (a)(1)(i) and (ii), the heading and first and last sentences in paragraph (a)(2)(i), paragraph (a)(2)(ii), and paragraphs (a)(3) through (5) are revised to read as follows:

§ 622.49 Annual Catch Limits (ACLs) and Accountability measures (AMs).

(a) * * *

(1) * * *

(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(v), the Assistant Administrator for Fisheries, NOAA, (AA) will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * *

(ii) *Recreational sector.* If recreational landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(2)(ii), the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. * * *

(2) * * *

(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.* * * The commercial ACL for 2010 and

subsequent fishing years is 138,000 lb (62,596 kg).

(ii) *Recreational sector.* If recreational landings, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register reducing the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational target catch for that following fishing year. The recreational ACL for 2010 and subsequent fishing years is 457,000 lb (207,291 kg). The recreational ACT for 2010 and subsequent fishing years is 405,000 lb (183,705 kg). Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(3) *Shallow-water grouper (SWG) combined.* (i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial SWG. The commercial ACL for SWG, in gutted weight, for 2012 and subsequent fishing years is 8.04 million lb (3.65 million kg).

(ii) [Reserved]

(4) *Gag.* (i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial gag. The applicable commercial ACLs for gag, in gutted weight, are 0.788 million lb (0.357 million kg) for 2012, 0.956 million lb (0.434 million kg) for 2013, 1.100 million lb (0.499 million kg) for 2014, and 1.217 million lb (0.552 million kg) for 2015 and subsequent fishing years.

(ii) *Recreational sector.* (A) Without regard to overfished status, if gag recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACLs specified in paragraph (a)(4)(ii)(D)of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of gag in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational ACT in the following fishing year.

(B) If gag are not overfished, and in addition to the measures specified in paragraph (a)(4)(ii)(A)of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (a)(4)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register to maintain the gag ACT, specified in paragraph (a)(4)(ii)(D) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's target catch is unnecessary. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational ACT in the following fishing year.

(C) In addition to the measures specified in paragraphs (a)(4)(ii)(A) and (B) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(4)(ii)(D) of this section, and gag are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL and the ACT for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(D) The applicable recreational ACLs for gag, in gutted weight, are 1.232 million lb (0.559 million kg) for 2012, 1.495 million lb (0.678 million kg) for 2013, 1.720 million lb (0.780 million kg) for 2014, and 1.903 million lb (0.863 million kg) for 2015 and subsequent fishing years. The recreational ACTs for gag, in gutted weight, are 1.031 million lb (0.468 million kg) for 2012, 1.287 million lb (0.584 million kg) for 2013, 1.519 million lb (0.689 million kg) for 2014, and 1.708 million lb (0.775 million kg) for 2015 and subsequent fishing years. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(5) *Red grouper.* (i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial red grouper. The applicable commercial ACL for red grouper, in gutted weight, for 2012 and subsequent fishing years is 6.03 million lb (2.735 million kg).

(ii) *Recreational sector.* (A) Without regard to overfished status, if red grouper recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACL specified in paragraph (a)(5)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of red grouper in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(B) If red grouper are not overfished, and in addition to the measures specified in paragraph (a)(5)(ii)(A) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(5)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register to maintain the red grouper ACT, specified in paragraph (a)(5)(ii)(D) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition, the notification will reduce the bag limit by one fish and reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year. The minimum red grouper bag limit for 2014 and subsequent fishing years is two fish.

(C) In addition to the measures specified in paragraphs (a)(5)(ii)(A) and (B) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (a)(5)(ii)(D) of this section, and red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL and the ACT for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(D) The recreational ACL for red grouper, in gutted weight, is 1.90 million lb (0.862 million kg) for 2012

and subsequent fishing years. The recreational ACT for red grouper, in gutted weight, is 1.730 million lb (0.785 million kg) for 2012 and subsequent fishing years. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

* * * * *

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120131078–2207–01]

RIN 0648–XA913

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Gulf of Maine Winter Flounder Catch Limit Revisions

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

ACTION: Emergency rule; request for comments.

SUMMARY: NMFS issues this final emergency rule under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action implements new stock status determination criteria for Gulf of Maine (GOM) winter flounder and associated increases in GOM winter flounder catch limits based on the most recent and best available scientific information. This action increases fishing year (FY) 2011 GOM winter flounder catch levels, including Overfishing Levels (OFLs), Acceptable Biological Catches (ABCs), Annual Catch Limits (ACLs), ACL components, and sector Annual Catch Entitlements (ACEs). The ACL components include sub-ACLs for the common pool and sectors. This action is intended to provide additional fishing opportunities, consistent with the Northeast (NE) Multispecies Fishery Management Plan (FMP) and the Magnuson-Stevens Act.

DATES: Effective February 7, 2012, through April 30, 2012. Comments must be received by March 12, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Vasquez, Fishery Policy Analyst, (978) 281–9166, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

This final emergency rule implements emergency measures, authorized by section 305(c) of the Magnuson-Stevens Act, to revise current GOM winter flounder catch limits immediately. On May 1, 2010, NMFS implemented catch limits developed by the New England Fishery Management Council (Council) under Framework Adjustment (FW) 44 (75 FR 18356; April 9, 2010) for all groundfish stocks, including GOM winter flounder, for FY 2010 through 2012. The catch levels specified by FW 44 included OFLs, ABCs, ACLs, and ACL components, including sub-ACLs for the common pool and sectors. On June 15, 2011, NMFS published (76 FR 34903) adjusted ACL subcomponents and adjusted sector ACEs for FY 2011 in order to reflect changes to the sector membership prior to the start the 2011 FY.

The FW 44 catch levels for all stocks, including GOM winter flounder, were based upon the most recent scientific information available at that time, *i.e.,* the stock assessments conducted by the Groundfish Assessment Review Meeting (GARM III) in 2008. The GARM III rejected the GOM winter flounder assessment due to its high degree of uncertainty, but concluded that there was a strong probability that the GOM winter flounder stock was overfished. As a result, the FY 2010–2012 catch levels in FW 44 were set at 75 percent of recent catches from 2006–2008; an annual ABC of 239 mt was set for FY 2010, 2011, and 2012.

A new peer reviewed benchmark stock assessment review (SARC 52) was completed for the winter flounder complex in June 2011, and the final summary report was completed in September 2011. The review committee accepted an assessment that provided an estimate of stock size and a proxy for F_{MSY}. The overfishing threshold was derived using F 40 percent (0.31) as a proxy for $F_{MSY,}$ and 0.23 as the corresponding threshold exploitation rate. Based on this information, the estimate of fishing mortality in 2010 was 0.03 (13 percent of F_{MSY}). Reviewers were able to determine from the data that the stock is not undergoing overfishing, but could not make an estimate of target biomass and, therefore, could not determine whether the stock is in an overfished condition.

The Council developed updated groundfish specifications, including updates for GOM winter flounder, for FY 2012–2014 through FW 47 to the NE Multispecies FMP. Using information from the new GOM winter flounder assessment, at its September 2011 meeting, the Council's Scientific and Statistical Committee (SSC) recommended an annual ABC of 1,078 mt for FY 2012–2014, a substantially higher amount than the currently specified FY 2010–2012 ABC of 239 mt. This recommendation was approved by the Council in November 2011 as part of FW 47, which is targeted for implementation, if approved, for FY 2012 (May 1, 2012).

Through a letter sent November 21, 2011, the Council requested, based on the new assessment results, that the Secretary of Commerce (Secretary) use emergency authority to increase the FY 2011 GOM winter flounder commercial ACL for the remainder of the 2011 FY out of concern that the current FY 2011 ACL may be unnecessarily constraining on the groundfish fishery. Recent catch information indicates that catches of this stock are higher than last year and may lead to lost opportunities for groundfish fishermen if the quota is reached before the end of the FY. Catch of GOM winter flounder as of January 7, 2012, indicated that nearly 56 percent of the FY 2011 commercial groundfish fishery sub-ACL has already been caught, with sectors having caught nearly 57 percent of their sub-ACL for this stock. During FY 2010, nearly 75 percent of the annual GOM winter flounder catch was harvested after November. This suggests that if those catch rates were to continue during FY 2011, the majority of the groundfish fishery would likely have to stop fishing in the GOM to avoid exceeding the sub-ACL for this stock by the end of FY 2011 (April 30, 2012), resulting in potentially substantial lost economic yield for the groundfish fishery.

NMFS policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) pursuant to section 305(c) of the Magnuson-Stevens Act specify three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a

significant economic opportunity that otherwise might be foregone.

The new information from the GOM winter flounder benchmark stock assessment is considered to be a ''recently discovered circumstance,'' which, in the context of the current FMP and low GOM winter flounder catch limits specified for FY 2011, has been determined by NMFS to represent an emergency situation. This circumstance is the result of the recently conducted assessment of GOM winter flounder, and the subsequent recommendations by the SSC and the Council, which significantly revised the stock status and specifications for this stock for the fishery. Although the new assessment was completed in June 2011, it was not possible to have predicted its outcome; nor could the SSC's recommended FY 2012–2014 ABC, or the Council's subsequent approval of this recommendation, have been foreseen in time to follow normal procedures for implementing this type of action under the Magnuson-Stevens Act. These decisions were made following the normal procedures for updating fishery specifications under the MSA and the FMP and would not have been completed any earlier. Although the Council has the authority to develop a management action to modify the GOM winter flounder catch limits, as exemplified through the adoption of increased FY 2012–2014 catch limits for this stock under FW 47, such an action could not be completed before the end of FY 2011. If the normal regulatory process is used to revise the GOM winter flounder catch limits, it would take substantially longer for the new limits to be implemented, and could result in triggering restrictive, and economically harmful management actions that otherwise may have been avoided. The FMP requires that fishing effort be reduced or stopped if catch of a single stock is projected to reach an ACL, and that accountability measures (AMs) be implemented if an ACL is exceeded, to payback an overage and to prevent the ACL from being exceeded again. Recent catch information indicates that catches of this stock are higher than last year and that, if these catch rates were to continue for the remainder of FY 2011, the majority of the groundfish fishery would likely have to stop fishing in the GOM well before the end of the 2011 FY in order to avoid exceeding the sub-ACL for this stock, Thus, a delay in implementing the revised catch limits could potentially have resulted in lost economic opportunity due to an early end to the FY 2011 fishing season, not only for GOM winter flounder, but also for several other groundfish stocks that are caught together.

The emergency presents serious management problems because the low catch limits for GOM winter flounder could result in substantially reduced fishing effort and decreased catch and revenue due to the multispecies nature of the fishery. When the projected catch of the ACL for a single stock such as GOM winter flounder triggers a reduction or cessation of fishing effort (for common pool and sector vessels, respectively), catches of several other stocks that are caught concurrently with GOM winter flounder may also be reduced.

NMFS has determined that the current situation meets the criteria for emergency action. Because this is a Secretarial emergency action, not a Council action, the involvement of the SSC in the specification of ABC is not specifically required, although the emergency rule must still be consistent with the best scientific information available. In their letter, the Council suggested NMFS consider alternatives that would increase the commercial groundfish GOM winter flounder sub-ACL two to three fold. NMFS considered this request and developed a preferred alternative that essentially implements the SSC and Council's recommended FY 2012 ABC in FY 2011, but only releases a portion of this ABC to the commercial fishery for the remainder of the current FY. Rather than providing the full FY ACL to the fishery, the FY 2011 GOM winter flounder ACL and ACL sub-components are increased by an amount equivalent to the monthly proportion of the FY 2012 ACL applied over what was the expected duration of this action (January–April 2012, or 4 months). Increasing the GOM winter flounder catch limits for the remainder of FY 2011, while not providing the full FY ACL, would enable the fishery to more effectively harvest available ACL for other stocks caught in conjunction with GOM winter flounder, but not to a degree that it would compromise efforts to rebuild other overfished stocks. Further, providing the full increase could also lower the leasing market price for this stock and potentially eliminate demand for this stock on the sector annual catch entitlement (ACE) leasing market. While this would benefit those seeking to acquire ACE for this stock, it could eliminate any benefits to those wishing to sell ACE of this stock to others. Each revised FY 2011 sub-ACL or sub-component was derived by adding 4 months of the appropriate FY 2012 sub-ACL/sub-component (as proposed in FW 47) to the FY 2011 catch (as of December 31, 2011) for that component: FY 2011 catch + ((FY 2012 sub-ACL/12)*4; see Table 1). For the remainder of the 2011 FY, this alternative effectively doubles the FW 44 FY 2011 commercial groundfish sub-ACL, thereby increasing the sector and common pool sub-ACLs, and increases the ACL sub-components allocated to the state waters fishery and ''other'' sub-component fisheries. Increasing the GOM winter flounder ACL eliminates the potential loss of economic opportunity for groundfish vessels by preventing an early closure of the fishery, and allowing vessels a better chance to catch their allocations of more abundant stocks by not constraining them under the FW 44 FY 2011 ACL.

TABLE 1—DERIVATION OF REVISED GOM WINTER FLOUNDER ACL COMPONENTS FOR FY 2011

GOM Winter Flounder ACL component	Proposed FW 47 FY 2012 catch level (mt) (Column A)	4 Months of FW 47 catch level (mt) (Column B)	Catch as of Dec. 31, 2011 (mt) (Column C)	Revised ACL component (mt) (Column D = B + C)
State Waters sub-component	272	91	72	163
Other sub-component	54	18	14	32
Groundfish sub-ACL	715	238	91	329
Total ACL	1040			* 524

* The total ACL is derived by adding up the sub-ACL and ACL sub-components, consistent with the method specified in FW 44, Appendix III.

The Secretary is taking emergency action to swiftly implement an increase in the GOM winter flounder ACL. If the normal regulatory process were to be used to revise the GOM winter flounder catch limits, it would not be able to be completed prior to the end of the 2011 FY (April 30, 2012), and so all potential benefits of this action would be lost and could not be recouped the following year. Thus, the immediate benefit of an emergency action outweighs the value that would be derived from the normal regulatory process.

The duration of this action is limited by the Magnuson-Stevens Act to 180 days. However, if the revised status determination criteria and revised specifications is made permanent by the approval of FW 47, which is targeted for implementation with the start of FY 2012 (May 1, 2012), then this temporary action is likely to be effective for the remainder of the 2011 FY (until April 30, 2012) as it is expected that FY 2012 specifications will be implemented before the start of FY 2012 (May 1, 2012).

Based upon the stock assessment results, NMFS is revising the stock status determination criteria for GOM winter flounder. The revised biomass target parameter (SSB_{MSY} or its proxy) is classified as ''undefined,'' and the maximum fishing mortality threshold is the F_{MSY} proxy F 40 percent MSP, or 0.31. To be consistent with the swept-area biomass approach used to model the status of this stock, F_{MSY} must be converted to an exploitation rate (threshold exploitation rate of 0.23).

Consistent with the revised stock status, NMFS is also revising the GOM winter flounder catch limits for FY 2011, including the OFL, ABC, ACL, and ACL components, including the FY 2011 sector ACEs and common pool sub-ACL. The revised GOM winter flounder catch limits are contained in Tables 2 and 3 below. NMFS conducted an analysis to determine new GOM winter flounder trip limits for common vessels for FY 2011, but was unable to identify an appropriate limit. NMFS examined historical fishing patterns, but little relationship could be found between GOM winter flounder possession limits and catch rates of GOM winter flounder in recent years. Also, possession limits did not appear to be a limiting factor in the catch of GOM winter flounder, based on this analysis. Furthermore, NMFS is concerned that a high GOM winter flounder trip limit for the remainder of FY 2011 may increase catch of GOM cod due to the multispecies nature of the fishery. Results from the most recent assessment of this stock (SARC 53) suggests that catch of GOM cod must be substantially reduced during FY 2012 to maintain consistency with conservation objectives of the FMP. In addition, the NMFS Northeast Regional Administrator has the authority under the current regulations to revise common pool trip limits at any time inseason to ensure that available sub-ACLs are caught and not exceeded. Therefore, NMFS is maintaining the current GOM winter flounder 250 lb/trip (113 kg)/trip) limit for common pool vessels. NMFS will continue to monitor landings of GOM winter flounder and will increase this trip limit, if necessary, to ensure the GOM winter flounder trip limit is not constraining on common pool vessels during the remainder of FY 2011.

TABLE 2—REVISED GOM WINTER FLOUNDER OFL, ABC, ACL AND ACL COMPONENTS FOR FY 2011

GOM Winter flounder catch limits	Current FW 44 Adjusted catch limits (mt)	Revised FY 2011 catch limits (mt)
OFL	570	1,458
ABC	239	1,078
Total ACL	231	524
State Waters sub-component	60	163
Other sub-component	12	32
Groundfish sub-ACL	159	329
Sector sub-ACL *	150	313
Common Pool sub-ACL *	8	16

* Final rule that updated sector membership (76 FR 34903; June 15, 2011).

TABLE 3—GOM WINTER FLOUNDER ACE BY SECTOR

[mt]

Sector	Current ACE (mt) FW 44 adjustment	Revised ACE (mt)
Fixed Gear	3.49	7.26
Maine Permit Bank Sector	1.38	2.87
NCCS	1.43	2.98
NEFS 2	33.34	69.43
NEFS 3	17.37	36.16
NEFS 4	7.45	15.51
NEFS 5	0.51	1.06
NEFS 6	5.84	12.15
NEFS 7	1.38	2.87
NEFS 8	5.33	11.09
NEFS 9	3.85	8.02
NEFS 10	43.21	89.97
NEFS 11	3.20	6.66
NEFS 12	0.50	1.04
NEFS 13	1.98	4.12
PCGS	2.03	4.22
Sustainable Harvest Sector I	9.37	19.52
Sustainable Harvest Sector III	5.15	10.72

TABLE 3—GOM WINTER FLOUNDER ACE BY SECTOR—Continued

[mt]

Sector	Current ACE (mt) FW 44 adjustment	Revised ACE (mt)
Tri-State	3.29	6.86
Total	150	313

All ACE values for sectors assume that each sector member has a valid permit for FY 2011.
NCCS: Northeast Coastal Communities Sector; NEFS: Northeast Fishery Sectors; PCGS: Port Clyde Community Groundfish Sector.

An environmental assessment (EA) was prepared that analyzes the impact of the revised GOM winter flounder catch limits for the remainder of FY 2011, and compares the impact to the current catch limits specified for FY 2011 (*i.e.,* the No Action Alternative). The revised level of GOM winter flounder catch is consistent with fishing at a sustainable level of mortality (F_{MSY}). Both scientific and management uncertainty are accounted for in this catch level and the ACL and ACL components are only getting a prorated increase, as opposed to the full proposed FY 2012 ACL, so the risks of negative biological impacts have been minimized. Furthermore, if the catch limits specified here are exceeded, AMs will be triggered, further reducing the risk of overfishing and adverse impacts to the stock. The revision to the FY 2011 GOM winter flounder catch limits in this rule may result in the catch of substantially more GOM winter flounder than under the No Action Alternative. The larger catch limit for GOM winter flounder may result in greater fishing effort and greater catch of other stocks in addition to GOM winter flounder, as compared to the current GOM winter flounder catch limits, because it is not likely that GOM winter flounder will serve as a constraining stock. However, all stocks have catch limits and management measures designed to manage catches, so additional fishing effort that could result from a larger GOM winter flounder catch limit is not likely to negatively impact other stocks or result in catches exceeding catch limits for other stocks. Given the preliminary results of the recent GOM cod assessment, NMFS was concerned that an increase in the GOM winter flounder ACL could have an impact on GOM cod, since these two stocks co-occur. However, in light of the overall effort reductions in the fishery and the constraints on fishing effort in effect, including the GOM cod ACL and a prohibition on discarding by sector vessels, effects on GOM cod should not be significant.

The larger catch limit for GOM winter flounder may result in an increased interaction of groundfish gear with protected species, as a result of increased effort. However, the increased effort in the context of the overall fishery is not expected to result in negative impacts to protected species. Five distinct population segments (DPSs) of Atlantic sturgeon are currently proposed to be listed under the ESA. Four DPSs are proposed to be listed as endangered (New York Bight, Chesapeake Bay, Carolina, and South Atlantic) and one DPS as threatened (Gulf of Maine). A final listing determination is expected in January 2012. Because analysis has shown that the NE multispecies fishery may interact with Atlantic sturgeon, if these DPSs are listed, a formal consultation will be reinitiated for the NE Multispecies FMP that will analyze the effects of any fishery interactions in a biological opinion (BO). NMFS will implement any appropriate measures outlined in the BO to mitigate harm to Atlantic sturgeon. It is difficult to predict the amount of fishing effort that will occur during the remainder of FY 2011 as a result of this action, due to the novelty of management changes in the fishery in recent years. Although effort may be expected to increase as a result of this action, the overall fishing effort in the fishery is expected to be lower than what has occurred in previous years as a result of overall mortality reductions implemented through Amendment 16 and FW 44 for GOM winter flounder and other stocks. Therefore, the net effect of the increase in the GOM winter flounder catch limits for the limited duration of this action, the remaining three months of FY 2011, will likely be negligible overall compared to operation of the fishery in recent years. These measures, therefore, are not likely to jeopardize the continued existence of Atlantic sturgeon between now and the time when a final listing determination will be made.

Due to the increased amount of GOM winter flounder catch allowed under this emergency action, the revised GOM winter flounder ACL represents an increase of potential revenue of $1.2 million, assuming recent average prices for GOM winter flounder remain steady, and assuming that the full ACL for GOM winter flounder will be harvested. This estimate of GOM winter flounder revenue is likely high, given the level of GOM winter flounder landings in recent years. Additional revenue may be generated from increased catch of other stocks due to the revised GOM winter flounder catch limits. The primary economic benefit of the revised ACL is expected to be associated with reducing the likelihood that an accountability measure would be triggered for the common pool and for sectors. The triggering of accountability measures would have reduced or precluded access to other stocks and the associated revenue.

Even with a total increase in the revised sector specifications of 163 mt of GOM winter flounder, the common pool and one of the sectors (NEFS XII) will still be left with less GOM winter flounder than their collective memberships landed during FY 2010. That is, even though the revised aggregate GOM winter flounder ACE is higher than the FY 2010 landings, the ACE for these sectors is still lower than the sector members' FY 2010 combined GOM winter flounder landings. However, the deficit for the one sector may be overcome by leasing ACE from other sectors that may have a surplus of GOM winter flounder ACE, that is, an ACE that is greater than their members' collective recent GOM winter flounder landings. With respect to the impact of the revised GOM winter flounder catch limit on individual members of sectors, there may be a similar deficit or surplus between an individual vessel's allocation from its sector and its own historical landings. However, these differences may also be offset through trading within a vessel's sector and with other sectors. The revised GOM winter flounder catch limits may reduce the ACE market price for leasing GOM winter flounder, by reducing the demand for GOM winter flounder on the ACE trading market. The magnitude of this decline is highly uncertain.

However, NMFS is only allowing a limited increase in the GOM winter flounder specifications, in order to provide additional fishing opportunity to groundfish vessels without collapsing the lease price.

Classification

NMFS has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson-Stevens Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds it impracticable and contrary to the public interest to provide for prior notice and opportunity for the public to comment under the provisions of section 553(b)(B) of the Administrative Procedure Act. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest. This action would result in the benefit of the revenues associated with larger GOM winter flounder catch limits. This action could not allow for prior public comment because the scientific review process and determination could not have been completed any earlier due to the inherent time constraints associated with such process. This action was initiated as a result of recently discovered circumstances that warrant an increase in the FY 2011 GOM winter flounder catch limits. A new assessment for GOM winter flounder was completed in June 2011 that significantly revised the status of this stock. As a result of the new assessment, the SSC recommended, and the Council subsequently approved at its meeting on November 16, 2011, substantially higher specifications for this stock for FY 2012–2014. These decisions were made following the normal procedures for updating fishery specifications under the MSA and the FMP, and could not have been foreseen in time to follow normal procedures for implementing this type of action under the Magnuson-Stevens Act. Although the Council could have initiated a management action to modify the GOM winter flounder catch limits for the remainder of FY 2011 at the time they approved the SSC's recommendation, as they are doing with the FY 2012–2014 catch limits for this stock under FW 47, such an action could not have been completed before the end of FY 2011 (April 30, 2012), and could have resulted in triggering restrictive and economically harmful management actions that otherwise could have been avoided. As described in an earlier paragraph, GOM winter flounder catch rates in FY 2011 have been such that reduction or cessation of fishing effort may have been necessary before the end of the fishing year in order for the common pool or sectors to avoid exceeding an ACL. An early end to the fishing season could have meant lost economic opportunity for groundfish vessels in the form of ACL left unharvested for GOM winter flounder and other stocks caught with it. An emergency action can be developed and implemented by NMFS much more swiftly than development of a Council action, which is subject to procedural and other requirements not applicable to the Secretary. Thus, NMFS initiated this temporary rule, at the request of the Council, to revise the GOM winter flounder catch limits before the end of FY 2011. If this rulemaking was delayed to allow for notice and comment, the current quota for some sectors could be exceeded, which could result in triggering restrictive and economically harmful AMs that otherwise could have been avoided. A sector that exceeds an allocation must pay back that overage on a pound-for-pound basis in the following year. The time necessary to provide for prior notice and opportunity for public comment for this action could severely curtail fishing operations if the current ACL is reached and measures to reduce or end fishing effort are triggered prior to implementation of the increased catch limit. In the interest of receiving public input on this action, the revised assessment upon which this action was based is made available to the public, and this action requests public comments on that document and the provisions in this rule.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement for a 30-day delay in effectiveness under the provisions of section 553(d) of the Administrative Procedure Act. As stated above, this action would result in a benefit of additional revenues associated with larger GOM winter flounder catch limits, and more opportunity for groundfish vessels to harvest their allocations of other stocks caught concurrently. This rule relieves a restriction by increasing the catch limit for GOM winter flounder and, consequently, extends fishing opportunity for fishermen that would otherwise be constrained under the current catch limits, which are restrictive and based on outdated biological information. If this rulemaking was delayed to allow for a 30-day delay in effectiveness, the fishery would likely forego some amount of the increase in catch level, and resulting additional fishing opportunity, implemented by this rule, and could suffer an early end to the fishing season before the end of FY 2011 (April 30, 2012). If the common pool was projected to catch the current catch limit, while the effectiveness of the new catch limits in this action is delayed, the regulations would still require NMFS to take action to implement unnecessary restrictive measures in the GOM to ensure the common pool did not exceed its current catch limit. Similarly, sector vessels would still be required to end fishing effort in the GOM if they reached their allocations under the current GOM winter flounder catch limits. While these restrictions would be alleviated after this rule becomes effective, the lost economic opportunity of foregone catches of GOM winter flounder, and other valuable groundfish stocks caught concurrently in the GOM, that would result from a delay in the effectiveness of this action could not be recouped in the few short weeks before the end of FY 2011, or in the following fishing year. For these reasons, the AA finds good cause to implement this rule immediately.

This emergency rule is exempt from E.O. 12866 because it contains no implementing regulations.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

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

Dated: February 7, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–3167 Filed 2–7–12; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 77, No. 28
Friday, February 10, 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–2012–0101; Directorate Identifier 2010–SW–042–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GMBH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter Deutschland GMBH (ECD) Model MBB–BK 117 C–1 and C–2 helicopters. This proposed AD would require installing a placard that corresponds to the maximum permissible flight altitude, amending the Rotorcraft Flight Manual (RFM) to revise the maximum permissible operating altitude, and inserting revised performance charts into the RFM. The proposed AD would also require a repetitive maintenance ''MAX N1 CHECK'' to determine the appropriate maximum altitudes. The AD would also require, if the engine or a fuel control unit (FCU) or module 2 or 3 is replaced, repeating the maintenance ''MAX N1 CHECK.'' Finally, the proposed AD specifies that modifying both engines would provide terminating action for the proposed AD requirements. This proposed AD is prompted by the failure of a ''few'' engines to reach the specified one-engine-inoperative (OEI) rating at altitudes above 10,000 feet. The proposed actions are intended to prevent flights at altitudes where the full OEI engine power cannot be reached and subsequent loss of control of the helicopter if an OEI operation is required.

DATES: We must receive comments on this proposed AD by April 10, 2012.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic 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 service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005; telephone (800) 232–0323; fax (972) 641–3710; or at *http://www.eurocopter.com.* You may review copies of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *ed.cuevas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued AD No.: 2008–0061, dated March 27, 2008, to correct an unsafe condition for ECD Model MBB–BK 117 C–1 and C–2 helicopters. EASA states that during testing at maximum certification altitude, a few helicopters could not reach the specified OEI power threshold. The cause was identified as an engine acceleration limitation due to a lower delivered fuel flow than the engine fuel flow demand needed to achieve the OEI rating at high altitude. They state that this condition could occur at altitudes exceeding 10,000 feet depending on the engine and FCU characteristics.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Related Service Information

ECD has issued Alert Service Bulletin (ASB) No. ASB–MBB–BK117–60–121, Revision 4, (ASB121) for Model MBB–BK 117 C–1 helicopters and ASB MBB BK117 C–2–71A–003, Revision 3 (ASB003), for Model MBB–BK 117 C–2 helicopters. Both ASBs are dated December 11, 2007, and apply to Turbomeca Arriel 1E2 engines. Both ASBs specify a ''MAX N1 CHECK'' for helicopters with FCUs that have not been modified by Turbomeca

modification TU 358, for takeoffs, landings, and hovering in-ground effect (IGE) or hovering out-of-ground effect (OGE) higher than 10,000 feet or flight above 13,000 feet. The ASBs specify limiting the maximum permissible flight altitude if the OEI rating cannot be achieved. The ASBs also specify the measures are no longer necessary when you modify both engines (Modification TU 358). EASA classified these ASBs as mandatory and issued AD No.: 2008–0061, dated March 27, 2008, to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would require compliance with specified portions of the manufacturer's service bulletin including installing a placard that corresponds to the maximum permissible flight altitude, amending the RFM to revise the maximum permissible operating altitude for both the MBB–BK 117 C–1 and C–2 helicopters, and inserting revised performance charts into the RFM for the C–1 model. This proposed AD would also require maintenance ''MAX N1 CHECKs'' to determine the modified maximum operational altitudes. This proposal would also require, if the engine or an FCU or module 2 or 3 is replaced, repeating the maintenance ''MAX N1 CHECK.'' Finally, this proposal specifies that modifying both engines with Turbomeca Modification TU 358 is terminating action for the requirements of this proposed AD. After the modification of both engines, you may remove the placards and flight manual revisions required by this AD.

Differences Between This Proposed AD and the EASA AD

We do not reference the effective date stated in the EASA AD because it has passed. We have modified the initial placard wording to make it clear that before performing the topping check, the ''operating altitude'' for takeoff, landing, and hovering is a pressure altitude (PA) of 10,000 feet, but flight up to a maximum 13,000 feet is permitted as long as the helicopter stays at an airspeed above effective translational lift. After the topping check is performed, the ''operating altitude'' limitation refers to all modes of flight.

Costs of Compliance

We estimate that this proposed AD would affect 108 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. It would take about 1 work-hour per helicopter to affix a placard and insert the RFM pages at an average labor rate of $85 per work-hour. We estimate 54 maintenance flight checks for higher altitude operators would be required at $1,000 each. There are no parts costs. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $63,180.

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, 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 to the extent that it justifies making a regulatory distinction; 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 an economic 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 Airworthiness Directive (AD):

Eurocopter Deutschland GMBH: Docket No. FAA–2012–0101; Directorate Identifier 2010–SW–042–AD.

(a) Applicability

This AD applies to Eurocopter Deutschland GMBH (ECD) Model MBB–BK 117 C–1 and C–2 helicopters with a Turbomeca Arriel 1E2 engine installed, which has a Fuel Control Unit (FCU) that has not been modified with Turbomeca Modification TU 358, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of engines to reach the specified one-engine-inoperative (OEI) rating at altitudes above 10,000 feet. This condition could result in high altitude operations when full OEI engine power is not available and subsequent loss of control of the helicopter if an OEI operation is required.

(c) Compliance

You are responsible for performing each action required by this AD within the specified compliance.

(d) Required Actions

(1) For Model MBB–BK117 *C–1* helicopters:

(i) Before any flight operation at or above a pressure altitude (PA) of 10,000 feet, unless accomplished previously:

(A) Affix a placard to the instrument panel in plain view of the pilot(s), which states: ''Maximum altitude for takeoff, landing, and hovering is 10,000 ft PA. Maximum operating altitude above effective translational lift is 13,000 ft PA,'' or comply with paragraph (1)(iii) of this AD. The term ''hovering'' as used in this placard includes both in-ground effect (IGE) and out-of-ground effect (OGE) hovering.

(B) Revise the Altitude Limitations section of the Rotorcraft Flight Manual (RFM), in accordance with paragraph 2.9 on pages 9 and 10; paragraph B.2.1. on page 15; and paragraph C.2.3.2. on page 16 of Eurocopter Alert Service Bulletin No. ASB–MBB–BK117–60–121, Revision 4, dated December 11, 2007 (ASB121).

(C) Attach each revised page 11–1–7 (ASB121, page 11) through 11–1–10 (ASB121, page 14) to the unrevised same-numbered page in the Performance section of the RFM.

(ii) Within 50 hours time-in-service (TIS), unless accomplished previously:

(A) Revise the RFM as required by paragraph (1)(i)(B) and (1)(i)(C) of this AD; and

(B) Affix the placard as required by paragraph (1)(i)(A) of this AD or comply with paragraph (1)(iii) of this AD.

(iii) At intervals not to exceed 600 hours TIS:

(A) Before operating between a *16,000 ft PA and 18,000 ft PA,* perform the ''MAX N1 CHECK'' by following the Accomplishment Instructions, paragraph 2.B.1.1., of ASB121. If the OEI rating is not reached, either affix a placard as required by paragraph (1)(i)(A) or comply with paragraph (1)(iii)(B) or (1)(iii)(C) of this AD.

(B) Before operating between *13,000 ft PA and 16,000 ft PA,* perform the ''MAX N1 CHECK'' by following the Accomplishment Instructions, paragraph 2.B.1.4., of ASB121.

(*1*) If the OEI rating is reached, affix a placard to the instrument panel in plain view of the pilot(s), which states: ''Maximum operating altitude is 16,000 ft PA.''

(*2*) If the OEI rating is not reached, either affix a placard as required by paragraph (1)(i)(A) of this AD or comply with paragraph (1)(iii)(C) of this AD.

(C) Before operating between *10,000 ft PA and 13,000 ft PA,* perform the ''MAX N1 CHECK'' by following the Accomplishment Instructions, paragraph 2.B.1.7., of ASB121.

(*1*) If the OEI rating is reached, affix a placard to the instrument panel in plain view of the pilot(s), which states: ''Maximum operating altitude is 13,000 ft PA.''

(*2*) If the OEI rating is not reached, affix a placard as required by paragraph (1)(i)(A) of this AD.

(2) For Model MBB–BK 117 *C–2* helicopters:

(i) Before any flight operation at or above a PA of 10,000 feet, unless accomplished previously:

(A) Affix a placard to the instrument panel in plain view of the pilot(s), which states: ''Maximum altitude for takeoff, landing, and hovering is 10,000 ft PA. Maximum operating altitude above effective translational lift is 13,000 ft PA,'' or comply with paragraph (2)(iii) of this AD. The term ''hovering'' as used in this placard includes both IGE and OGE hovering.

(B) Revise the Altitude Limitations section of the RFM in accordance with paragraph A.2.3. on page 10 and paragraph 2.8. on page 11 of Eurocopter ASB No. MBB BK117 C–2–71A–003, Revision 3, dated December 11, 2007 (ASB003).

(ii) Within 50 hours TIS, unless accomplished previously:

(A) Revise the RFM as required by paragraph (2)(i)(B) of this AD; and

(B) Affix a placard as required by paragraph (2)(i)(A) of this AD or comply with paragraph (2)(iii) of this AD.

(iii) At intervals not to exceed 600 hours TIS:

(A) Before operating between *16,000 ft PA and 18,000 ft PA,* perform the ''MAX N1 CHECK'' by following the Accomplishment Instructions, paragraph 3.A.(1) (on pages 4 and 5), of ASB003. If the OEI rating is not reached, either affix a placard as required by paragraph (2)(i)(A) or comply with paragraph (2)(iii)(B) or (2)(iii)(C) of this AD.

(B) Before operating between *13,000 ft PA and 16,000 ft PA,* perform the ''MAX N1 CHECK'' by following the Accomplishment Instructions, paragraph 3.A.(1) (on pages 5 and 6) of ASB003.

(*1*) If the OEI rating is reached, affix a placard to the instrument panel in plain view of the pilot(s), which states: ''Maximum operating altitude is 16,000 ft PA.''

(*2*) If the OEI rating is not reached, either affix a placard as required by paragraph (2)(i)(A) or comply with paragraph (2)(iii)(C) of this AD.

(C) Before operating between *10,000 ft PA and 13,000 ft PA,* perform the ''MAX N1 CHECK'' by following the Accomplishment Instructions, paragraph 3.A.1. (on page 7) of ASB003.

(*1*) If the OEI rating is reached, affix a placard to the instrument panel in plain view of the pilot(s), which states: ''Maximum operating altitude is 13,000 ft PA.''

(*2*) If the OEI rating is not reached, affix a placard as required by paragraph (2)(i)(A) of this AD.

(3) If an engine, FCU, engine module 2 or engine module 3 is replaced, before any flight operation at or above a PA of 10,000 feet, comply with the requirements of paragraph (1) of this AD for the Model MBB–BK 117 C–1 helicopter or paragraph (2) of this AD for the Model MBB–BK 117 C–2 helicopter.

(4) Modifying both engines with Turbomeca Modification TU 358 is terminating action for the requirements of this AD. After modifying both engines, remove from the RFM the revised altitude limitations and the revised performance pages required by this AD.

(e) Alternative Methods of Compliance (AMOC)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Ed Cuevas, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *ed.cuevas@faa.gov.*

(2) For operations conducted under a Part 119 operating certificate or under Part 91, Subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(f) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (Germany) AD No.: 2008–0061, dated March 27, 2008.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 1100, Placards and Markings.

Issued in Fort Worth, Texas, on January 27, 2012.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–3187 Filed 2–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0111; Directorate Identifier 2011–NM–089–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus 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 Airbus Model A330–200 series airplanes; Model A330–300 series airplanes, Model A340–200 series airplanes; Model A340–300 series airplanes; Model A340–541 airplanes; and Model A340–642 airplanes. This proposed AD was prompted by reports of cracks in the bogie pivot pin caused by material heating due to friction between the bogie pivot pin and bush. This proposed AD would require performing a detailed inspection for degradation of the bogie pivot pins and pivot pin bushes of the main and central landing gear for any cracks and damage, and repairing or replacing bogie pivot pins and pivot pin bushes, if necessary. We are proposing this AD to correct and detect cracks and damage to the main and central landing gear, which could result in the collapse of the landing gear and adversely affect the airplane's continued safe flight and landing.

DATES: We must receive comments on this proposed AD by March 26, 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 Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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–2012–0111; Directorate Identifier 2011–NM–089–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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0040, dated March 8, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During removals of A330/340 Main Landing Gear Bogie Beams and A340–500/600 Centre Landing Gear Bogie Beams, cracks in the Bogie Pivot Pin (BPP) have been found.
>
> Investigations indicated that the main root cause is material heating due to friction between bogie pivot pin and bush. Consequences of that heating are chrome detachment and stress corrosion cracking (SCC).
>
> This situation, if not corrected, could result in the collapse of the main or central landing gear.
>
> As a precautionary measure, this [EASA] AD requires a one-time [detailed] inspection of the main landing gear (all types of A330 and A340) and central landing gear (A340–500/600 only) to detect degradation * * * of the BPP [and cracks and damages of the bushes], as applicable to aeroplane model, and the reporting of inspections results.

Required actions also include, for certain airplanes, a magnetic particle inspection of the bogie pivot pin for corrosion and base metal cracks. The corrective actions include replacing any cracked or damaged pivot pin bush with a new or serviceable pivot pin bush, and replacing any corroded or cracked bogie pin with a new bogie pin. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the following service bulletins:

- Airbus Mandatory Service Bulletin A330–32–3240, including Appendix 1, dated December 8, 2010 (for Model A330–200 series airplanes and Model A330–300 series airplanes);
- Airbus Mandatory Service Bulletin A340–32–4281, including Appendix 1, dated December 8, 2010 (for Model A340–200 series airplanes and Model A340–300 series airplanes); and
- Airbus Mandatory Service Bulletin A340–32–5096, including Appendix 1, dated December 8, 2010 (for Model A340–541 airplanes and A340–642 airplanes).

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 29 products of U.S. registry. We also estimate that it would take about 22 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $54,230, or $1,870 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $21,222, for a cost of $21,732 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:

Airbus: Docket No. FAA–2012–0111; Directorate Identifier 2011–NM–089–AD.

(a) Comments Due Date

We must receive comments by March 26, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; Model A340–311, –312, and –313 airplanes; Model A340–541 airplanes; and Model A340–642 airplanes; certificated in any category; all manufacturer serial numbers, except those on which Airbus modification 54500 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing Gear.

(e) Reason

This AD was prompted by reports of cracks in the bogie pivot pin caused by material heating due to friction between the bogie pivot pin and bush. We are issuing this AD to correct and detect cracks and damage to the main and central landing gear, which could result in the collapse of the landing gear and adversely affect the airplane's continued safe flight and landing.

(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) Inspection

Within 26 months after the effective date of this AD or within 26 months after the first flight of the airplane, whichever occurs later; but no earlier than 12 months after the first flight of the airplane: Do a detailed inspection for degradation of the bogie pivot pins and pivot pin bushes of the main and central landing gear, for any cracks and damage (*i.e.,* loss of chromium plate, loose chromium, sharp edges), in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) Airbus Mandatory Service Bulletin A330–32–3240, including Appendix 1, dated December 8, 2010 (for Model A330–200 series airplanes and Model A330–300 series airplanes).

(2) Airbus Mandatory Service Bulletin A340–32–4281, including Appendix 1, dated December 8, 2010 (for Airbus Model A340–200 series airplanes and Model A340–300 series airplanes).

(3) Airbus Mandatory Service Bulletin A340–32–5096, including Appendix 1, dated December 8, 2010 (for Model A340–541 airplanes and A340–642 airplanes).

(h) Corrective Action

If, during the inspection specified in paragraph (g) of this AD, any pivot pin bush is found cracked or damaged: Before further flight, record all findings (both positive and negative), as required by paragraph (k) of this AD, and repair or replace the pivot pin bush with a new or serviceable pivot pin bush, in accordance with the Accomplishment Instructions of the applicable service bulletin specified paragraph (h)(1), (h)(2), or (h)(3) of this AD.

(1) Airbus Mandatory Service Bulletin A330–32–3240, including Appendix 1, dated December 8, 2010 (for Model A330–200 series airplanes and Model A330–300 series airplanes).

(2) Airbus Mandatory Service Bulletin A340–32–4281, including Appendix 1, dated December 8, 2010 (for Airbus Model A340–200 series airplanes and Model A340–300 series airplanes).

(3) Airbus Mandatory Service Bulletin A340–32–5096, including Appendix 1, dated December 8, 2010 (for Model A340–541 airplanes and A340–642 airplanes).

(i) Record Findings and Inspection

If, during the inspection specified in paragraph (g) of this AD, degraded chrome plating on any bogie pivot pin is found: Before further flight, record findings (both positive and negative), as required by paragraph (k) of this AD, and do a non-destructive test (magnetic particle inspection) of the affected bogie pivot pin for corrosion and base metal cracks, in accordance with the Accomplishment Instructions of the applicable service bulletin specified paragraph (i)(1), (i)(2), or (i)(3) of this AD.

(1) Airbus Mandatory Service Bulletin A330–32–3240, including Appendix 1, dated December 8, 2010 (for Model A330–200 series airplanes and Model A330–300 series airplanes).

(2) Airbus Mandatory Service Bulletin A340–32–4281, including Appendix 1, dated December 8, 2010 (for Airbus Model A340–200 series airplanes and Model A340–300 series airplanes).

(3) Airbus Mandatory Service Bulletin A340–32–5096, including Appendix 1, dated December 8, 2010 (for Model A340–541 airplanes and A340–642 airplanes).

(j) Repair or Replacement

If, during the non-destructive test (magnetic particle inspection) specified in paragraph (i) of this AD, the bogie pivot pin is found corroded or the base metal is cracked: Before further flight, repair or replace the bogie pin with a new or serviceable bogie pin, in accordance with the Accomplishment Instructions of the applicable service bulletin specified paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Airbus Mandatory Service Bulletin A330–32–3240, including Appendix 1, dated December 8, 2010 (for Model A330–200 series airplanes and Model A330–300 series airplanes.

(2) Airbus Mandatory Service Bulletin A340–32–4281, including Appendix 1, dated December 8, 2010 (for Airbus Model A340–200 series airplanes and Model A340–300 series airplanes).

(3) Airbus Mandatory Service Bulletin A340–32–5096, including Appendix 1, dated December 8, 2010 (for Model A340–541 airplanes and A340–642 airplanes).

(k) Reporting Requirement

Submit a report of the findings (both positive and negative) of the inspections required by paragraphs (g) and (i) of this AD to Airbus, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France, ATTN: SDC32 Technical Data and Documentation Services; fax (+33) 5 61 93 28 06; email *sb.reporting@airbus.com;* at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD. The report must include the inspection results and description of any discrepancies found.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):*

The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly

to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* 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.

(m) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0040, dated March 8, 2011, and the service information specified in paragraphs (m)(1) through (m)(3) of this AD, for related information.

(1) Airbus Mandatory Service Bulletin A330–32–3240, including Appendix 1, dated December 8, 2010.

(2) Airbus Mandatory Service Bulletin A340–32–4281, including Appendix 1, dated December 8, 2010.

(3) Airbus Mandatory Service Bulletin A340–32–5096, including Appendix 1, dated December 8, 2010.

Issued in Renton, Washington on February 3, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–3105 Filed 2–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. FAA 2011–1397]

Clarification of Policy Regarding Approved Training Programs; Correction

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability; Correction.

SUMMARY: The FAA is correcting a notice published on December 27, 2011 (76 FR 80831). In that notice of availability the FAA announced the availability of an FAA Notice that would require FAA inspectors to review policy regarding approved training programs as well as to identify and correct those training programs which erroneously issued credit for previous training or checking. The Notice also provided guidance on constructing reduced hour training programs based on previous experience. Upon review of the comments and any necessary revision, the Notice would cancel and replace FAA Order 8900.1, Volume 3, Chapter 19, Paragraph 3–1111. This document corrects an incorrect comment due date.

DATES: Written comments must be received on or before February 27, 2012.

ADDRESSES: Send comments identified by docket number FAA–2011–1397 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Robert Burke, Air Carrier Training Branch, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8262; facsimile: 202–267–5229; email: *robert.burke@faa.gov.*

Background

On December 27, 2011, the FAA published a notice of availability entitled, ''Clarification of Policy Regarding Approved Training Programs'' (76 FR 80831).

The FAA Order 8900.1, Flight Standards Information Management System, was issued on September 13, 2007. This order consolidated and replaced FAA Orders 8300.1, 8400.1, and 8700.1, the FAA's guidance to inspectors. There have been numerous inquiries by part 135 certificate holders regarding the acceptance of training/evaluations previously completed by a crewmember while in the employment of another certificate holder. Regulations do not permit the crediting of such training (with the specific exception of CRM and DRM training).

Additionally, some training centers have distributed a training program template that provides credit for training/evaluations conducted by another operator. Such provisions are contrary to the intent as well as the technical provisions of part 135 and are not appropriate for inclusion in a certificate holder's approved training program.

Part 135 certificate holders may develop and submit for approval multiple curriculums for a particular crewmember position and aircraft make/model/variant. For example, a part 135 certificate holder may have a an initial new-hire curriculum designed to meet the requirements of new hire crewmembers that have minimal flight

time, no previous part 135 experience, or do not have qualifications related to the certificate holder's operational environment. The certificate holder may then also apply for a reduced new hire curriculum for pilots that have previous experience as a crewmember in part 135 operations and/or the particular aircraft and duty position. The second curriculum in this example may have less training hours due to the crewmember's extensive experience. Each of these curriculums would also have detailed prerequisites to define the level of experience required to enter into either of these new hire programs. There are no hour requirements which need to be defined on a reduced training program, however all the training elements of the certificate holder's full initial training program must be accomplished as well as the qualification module.

While the FAA generally does not request comment on internal Notices and orders, the agency has established a docket for public comments regarding this guidance for inspectors in recognition of the interest of current 14 CFR part 135 certificate holders. The agency will consider all comments received by February 27, 2012. Comments received after that date may be considered if consideration will not delay agency action on the review. A copy of the proposed order is available for review in the assigned docket for the Order at *http://www.regulations.gov.*

Correction

This document is correcting an incorrect comment due date of January 26, 2012 and replacing it with the correct comment due date of February 27, 2012.

Issued in Washington, DC, on February 2, 2012.

John S. Duncan,

Acting Deputy Director, FAA Flight Standards Service.

[FR Doc. 2012–3194 Filed 2–9–12; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1223

[CPSC Docket No. CPSC–2012–0011]

RIN 3041–AC90

Safety Standard for Infant Swings

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 (''CPSIA'') requires the United States Consumer Product Safety Commission (''Commission,'' ''CPSC,'' ''we,'' or ''us'') to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a safety standard for infant swings in response to the direction under the CPSIA.

DATES: Submit comments by April 25, 2012.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature of the proposed rule should be directed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to: *oira_submission@omb.eop.gov*.

Other comments, identified by Docket No. CPSC–2012–0011, may be submitted electronically or in writing:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov*. Follow the instructions for submitting comments. To ensure timely processing of comments, we are no longer directly accepting comments submitted by electronic mail (email), except through *www.regulations.gov.* We encourage you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov*, and insert the docket number, CPSC 2012–0011, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Celestine T. Kiss, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, 4330 East West Highway, Bethesda, MD 20814; email: *CKiss@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

The Consumer Product Safety Improvement Act of 2008, (''CPSIA,'' Pub L. 110–314) was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant and toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The term ''durable infant or toddler product'' is defined in section 104(f)(1) of the CPSIA as a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. Infant swings are one of the products specifically identified in section 104(f)(2)(F) as a durable infant or toddler product.

In this document, we propose a safety standard for infant swings. The proposed standard is based on the voluntary standard developed by ASTM International (formerly the American Society for Testing and Materials), ASTM F 2088–11b, ''Standard Consumer Safety Specification for Infant Swings'' (''ASTM F 2088–11b''). The ASTM standard is copyrighted but can be viewed as a read-only document, only during the comment period for this proposal, at: *http://www.astm.org/cpsc.htm,* by permission of ASTM.

The information discussed in this preamble supporting the proposed safety standard for infant swings can be found in the staff briefing package, which is available at *http://www.cpsc.gov/.*

B. The Product

1. Definition

ASTM F 2088–11b defines an ''infant swing'' as a ''stationary unit with a frame and powered mechanism that

enables an infant to swing in a seated position. An infant swing is intended for use with infants from birth until a child is able to sit up unassisted.'' ASTM F 2088–11b also covers ''cradle swings,'' which are defined as ''an infant swing which is intended for use by a child lying flat.'' Cradle swings are distinguishable from other types of swings because they enable a child to lie flat on their back, even when the swing is in motion. ASTM F 2088–11b also covers ''travel swings,'' which are a ''low profile, compact swing having a distance of 6 in. or less between the underside of the seat bottom and the support surface (floor) at any point in the seat's range of motion.''

2. The Market

Based on a 2005 survey conducted by American Baby Group, titled, ''2006 Baby Products Tracking Study,'' and Centers for Disease Control and Prevention birth data, we estimate that approximately 2.7 million infant swings are sold in the United States each year. We estimate that there are at least 10 manufacturers or importers supplying infant swings to the U.S. market. Eight firms are domestic manufacturers, and two are domestic importers with a foreign parent company.

The Juvenile Products Manufacturers Association (''JPMA'') is the major U.S. trade association that represents juvenile product manufacturers and importers. The JPMA provides a certification program that allows manufacturers and importers to use the JPMA seal if they voluntarily submit their products for testing to determine if they meet the voluntary standard. Currently, infant swings produced by 5 of the 10 firms, 4 manufacturers and 1 importer, have been certified by the JPMA as compliant with the ASTM voluntary infant swing standard.

C. Infant Swings and the ASTM Voluntary Standard

1. Introduction and Consultation Requirement

Section 104(b)(1)(A) of the CPSIA requires us to consult representatives of ''consumer groups, juvenile product manufacturers, and independent child product engineers and experts'' to ''examine and assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler products.'' ASTM F 2088 is the primary infant swing standard in effect in the United States. Through the ASTM process, we consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public.

2. The ASTM Voluntary Standard

ASTM F 2088 was first published in September 2001. It has been updated seven times, with the latest edition, ASTM F 2088–11b, published in November 2011. The key provisions of the current ASTM infant swing standard include: definitions; general requirements; performance requirements; specific test methods; and requirements for marking, labeling, and instructional literature.

a. Definitions. ASTM F 2088–11b contains definitions for key terms found in the standard.

b. General Requirements and Specific Test Methods. ASTM F 2088–11b contains general requirements that infant swings must meet, as well as mandated test methods that must be used to ensure that the product meets those requirements. It includes:

- Restrictions on sharp edges and points, small parts (as well as their protective caps), lead paint, and wood parts;
- Specifications to prevent scissoring, shearing, and pinching;
- Specifications on openings (intended to prevent finger and toe entrapment), labeling (intended to prevent labels from being removed and ingested or aspirated), and coil springs; and
- Requirements for toy accessory items, including mobiles that accompany infant swings.

c. Performance Requirements and Specific Test Methods. ASTM F 2088–11b contains performance requirements that infant swings must meet, as well as mandated test methods that must be used to ensure that the product meets those requirements. The standard includes:

- Structural integrity requirements, including dynamic and static load requirements, which are meant to ensure that the swing can withstand a certain amount of force;
- Stability requirements, meant to ensure that the swing does not tip over;
- Requirements to prevent unintentional folding of the swing;
- Restraint system requirements;
- A requirement to ensure that infants are not able to slip through the leg opening and strangle (because their bodies can slip through, but their heads cannot);
- Requirements for cradle swings to ensure that infants will remain flat; and
- Requirements for the battery compartment of swings, which require, for example that the compartment contain a means to prevent battery leakage.

d. Marking, Labeling, and Instructional Literature. ASTM F 2088–11b has requirements for marking, labeling, and instructions that must accompany an infant swing, including warnings advising caregivers to:

- Always use the restraint system in the swing;
- Never leave an infant unattended in a swing;
- Stop using the swing when an infant is able to climb out of it;
- Always use the most reclined seat position in swings with a certain adjustable seat recline until the infant can hold their head up unassisted; and
- Never place travel swings on an elevated surface.

D. Incident Data

1. Introduction

There have been 2,268 incidents reported to us regarding infant swings from January 1, 2002 through May 18, 2011. All the incidents involved children under the age of 3 years. Of those reported incidents, there were 15 fatalities, 600 nonfatal injuries, and 1,653 noninjury incidents. We believe that the incidents captured in this data reflect the range of hazard patterns seen in infant swings.

Table 1 is a summary of the 15 fatalities reported to us from January 1, 2002 through May 18, 2011. We analyzed each fatality and determined: (1) The cause of the infant's death, which is usually based on the conclusion of the medical examiner; and (2) whether the infant swing caused or contributed to the fatality. There were five deaths that can be categorized as slump-over deaths. These fatalities, as well as the two other fatalities that were caused by the infant swing, are explained in more detail in Section E of this preamble.

Table 2 lists the hazards seen in infant swings. We determined the percentage of the incident reports attributable to each hazard, as well as the percentage of reported injuries attributable to each hazard. The percentages have been rounded up or down to represent a whole number. The hazards are explained in more detail in Section E of this preamble.

Information on fatalities, injuries, and noninjury incident reports that are attributable to unreasonable product misuse are mentioned only in the tables in this section. Examples of unreasonable product misuse include: placing two children in a swing meant for one child, or failing to use the restraint system. In addition, information is included only in the tables in this section on fatalities,

injuries, and noninjury incident reports where: (1) it is unknown whether the infant swing contributed to the incident; or (2) there is insufficient information included in the report to determine what happened.

Fatalities, injuries, and noninjury incidents where the swing caused or contributed to the incident are discussed fully in Section E of this preamble.

2. Fatality Summary

TABLE 1—INFANT SWINGS FATALITY SUMMARY, JANUARY 1, 2002 THROUGH MAY 18, 2011

Description of fatality	Number of fatalities
Cause of Death ("COD") Positional Asphyxia, Slump-Over Death	4
COD Undetermined, Slump-Over Death	1
COD Positional Asphyxia, Attributable to Swing Restraint Issue	1
COD Undetermined, Attributable to Swing Seat Issue	1
COD Positional Asphyxia, Attributable to Product Misuse	2
COD Undetermined, Attributable to Product Misuse	2
COD Undetermined, Unknown whether Swing Contributed to Fatality	4

3. Incident Summary

TABLE 2—INFANT SWINGS HAZARD SUMMARY, JANUARY 1, 2002 THROUGH MAY 18, 2011

Hazard	Percentage of reported incidents	Percentage of reported injuries
Restraint Issues, Both Inadequate Restraint Design and Restraint Failure.	27	33, including 1 fatality and 1 fall that resulted in a hospitalization.
Broken, Detached or Loose Swing Components (*e.g.,* arm, leg, motor housing or hardware).	25	20
Seat Issues, Both Inadequate Seat Design and Seat Failure	16	12, including 1 fatality.
Inadequate Clearance Between the Seat and the Swing Frame.	13	22
Electrical or Battery Issues	9	1
Swing Instability	4	2, including 1 fall that resulted in a hospitalization.
Broken or Detached Toys or Mobiles	2	4
Miscellaneous, Including Reports of Product Misuse and Reports with Insufficient Information.	4	7

E. Assessment of Voluntary Standard ASTM F 2088–11b and Description of Proposed Changes to ASTM F 2088–11b

1. Introduction

Infant swing hazards are best analyzed in conjunction with an assessment of the existing provisions of ASTM 2088–11b. In this section, we describe each hazard in detail. Following the description of the hazard is a summary of the requirements currently found in ASTM 2088–11b, if any provisions exist in the standard that are meant to address the hazard. If the existing standards are not adequate to address the hazard, we present our recommended changes. In most cases, it is helpful to compare the existing language in ASTM F 2088–11b with the proposed language containing our recommended changes. When this is done, bold lettering indicates new language, and language that is struck through indicates language that we propose should be deleted. In each case, consistent with section 104 of the CPSIA, the change must be more stringent than the existing voluntary standard in order to further reduce the risk of injury associated with the hazard.

2. Slump-Over Deaths

a. Description of Hazard

Of the 15 reported fatalities, 5 deaths have been deemed slump-over deaths. In 3 instances, the medical examiner or investigating officials specifically described the infant as being ''slumped over.'' In 2 additional cases, the description of the infant's position suggests slump-over deaths. Slump-over deaths occur when very young children (in these cases, infants between the ages of 2 weeks old and 3 months old) lack the neck muscle tone and strength to keep their head up. In 4 of the 5 slump-over deaths, the official cause of death, as determined by the medical examiner, is positional asphyxia. Positional asphyxiation occurs when the position of the child's body (such as compression of their neck from their head being slumped over) prevents the child from breathing. In one case, the cause of death was undetermined, but we have concluded, based on a review of the fatality, that it was a slump-over death.

b. Assessment of ASTM F 2088–11b

Section 8.3.1(4) of ASTM F 2088–11b requires the following warning label on all infant swings that have an adjustable seat recline with a seat back angle greater than 50°: ''Use only in most reclined seat position until infant can hold head up unassisted.'' Infant swings with a seat back angle greater than 50° require the infant to be able to support their head, while a swing with a seat back angle less than 50° is more reclined and allows the infant to lay their head on the seat back.

We have determined that there is no engineering solution, such as a restraint, that would adequately address slump-over deaths. By including the warning statement in ASTM F 2088–11b, the ASTM committee recognizes the need for the statement in order to prevent slump-over deaths in infant swings. We agree and are not proposing any additional changes to the voluntary standard to address this issue. However, we are seeking comments related to slump-over deaths in section L of this preamble.

3. Restraint Design and Restraint Failures

a. Description of Hazard

Issues related to restraints comprised 27 percent of the reports we received from the public. Restraint issues accounted for 33 percent of the reported injuries. Most of the reported injuries are attributable to restraint design issues, while the remainder are attributable to restraint failure.

Restraint design hazards arise when the restraint system is unable to contain a child in the swing seat, even when the restraint is assembled properly and is functioning according to the manufacturer's intent. Common reports in this category include infants who are able to lean forward or to the side and fall out of the seat. Some infants are strong enough to push themselves back and up with their feet, causing them to fall backward out of the swing, usually landing headfirst. One infant fatality and one fall that resulted in a hospitalization are attributable to restraint design problems.

Restraint failures include belt buckles or straps that break. In some reports, the restraint system detaches from the swing completely. When the restraint system does fail in some way, the result is usually a fall from the swing, which can result in serious injuries.

b. Assessment of ASTM F 2088–11b

Section 6.4 of ASTM F 2088–11b requires all infant swings to have a waist and crotch restraint system. The standard also requires that swing restraint systems be tested to ensure that the attachment points of the system can withstand a certain amount of force, comparable to the amount of force an infant might apply. Manufacturers must ensure that the restraint system is attached to the swing and will not become detached through normal use.

ASTM F 2088–11b also contains a shoulder strap/harness requirement for infant swings with a seat back angle greater than 50°. Infants seated in swings with a seat back angle greater than 50° are much more likely to be able to lean forward or to the side, or be able to push backward. When this happens, the infant may fall out of the seat completely, or they may come into contact with the frame of the swing. Having shoulder straps on swings with a seat back angle exceeding 50° will aid in keeping the infant positioned in the swing seat.

c. Description of Proposed Changes

The shoulder strap requirement is intended to address many restraint issues. The proposed rule would change section 7.12, which provides the method for testing seat back angles in order to determine whether the seat back angle is greater than 50°. Currently, the method involves placing a hinged board in the seat swing and using an inclinometer to measure the seat back angle. The proposed rule would result in more accurate, repeatable testing, by clarifying the test method to include: (1) Placing the seat in the most upright use position (currently the language only requires placing the seat in ''the most upright position''); (2) removing all positioning accessories, such as pillows, that might interfere with the measurement; (3) positioning the belt restraint systems in order to limit interference with the measurement; and (4) mandating that the hinged board be made of steel because it better replicates the weight of a child in a seat. Currently, the hinged board can be made of wood. These changes would result in a more stringent standard by ensuring that measurements are more accurate and repeatable, thus, reducing the number of injuries associated with swings.

d. Proposed Change in Standard

Currently, ASTM F 2088–11b contains the following test method for measuring the seat back angle at section 7.12:

7.12 *Seat Back Angle Measurement*—Place the back of the swing in the most upright position. Place the hinged boards with the hinged edge into the junction of the swing back and seat (see Fig. 8). Place the inclinometer on the floor and zero the reading. Manually pivot the swing to its furthermost back position. While maintaining this position, place the inclinometer up against the back recline board to obtain the seat back angle as shown in Fig. 9.

We are proposing that section 7.12 of ASTM F 2088–11b be replaced by the following language:

7.12 *Seat Back Angle Measurement*—Place the back of the swing in the most upright use position. Remove positioning accessories, including pillows. Orient the belt restraint segments to limit interaction with the hinged boards. Place the hinged boards with the hinged edge into the junction of the swing back and seat (see Fig. 8). Place the inclinometer on the floor and zero the reading. Manually pivot the swing to its furthermost back position. While maintaining this position, place the inclinometer up against the back recline board to obtain the seat back angle as shown in Fig. 9. Hinged boards shall be made of C1020 steel using a 4 by 4 in. (101 by 101 mm) plate hinged to a 4 by 9 in. (101 by 225 mm) plate. The thicknesses shall be adjusted so that the mass is equal to 17.5 lbm.

4. Broken, Detached, or Loose Components

a. Description of Hazard

Broken, detached, and loose components, such as arm, leg, motor housing, and hardware account for the third highest number of injuries (20%) and second most number of incident reports (25%). When part of the frame fails, or when hardware (such as screws) fall out of the product, the swing is likely to collapse with the infant seated inside the swing.

b. Assessment of ASTM F 2088–11b

Currently, the ASTM standard requires that the durability of a swing's arm, leg, motor housing, and hardware be tested by dropping a 25 pound weight onto the seat of the swing 50 times, or cycles. This is called dynamic loading in the ASTM standard and is meant to test the structural integrity of the swing. If any part of the swing breaks, or changes in such a way that would cause the product not to fully support a child, the swing fails the test.

c. Description of Proposed Changes

The proposed rule would make two changes to the dynamic load test that is found in section 7.2.1 of ASTM F 2088–11b. One change is a significant modification, and the other is a test clarification. The modification would increase the number of cycles from 50 to 500. We tested swing samples from different manufacturers, as well as a range of models and designs. The testing revealed that 500 cycles was the point at which the least robust swings started to show signs of fatigue that might result in structural failures of the swing components. Increasing the number of test cycles from 50 to 500 will lead to a reduction in injuries in infant swings that occur when the arm, leg, motor housing, or hardware of a swing fails.

The proposal also would make a clarification to the dynamic load test. Currently, when setting up the swing, if the product has more than one height position, recline position, or facing direction, the product must be tested in the configuration most likely to fail. The proposed rule would account for tray positions and any other adjustable features. This will result in more repeatable and accurate testing, which will reduce the risk of injury in swings.

d. Proposed Change in Standard

Currently, ASTM F 2088–11b contains the following test method at sections 7.2.1.2 and 7.2.1.3:

7.2.1.2 Set-up the swing in accordance with the manufacturer's instructions. If the swing seat has more than one height position,

recline position, or facing direction, test the product in the configuration most likely to fail.

7.2.1.3 Place the shot bag on the seating surface of the swing and allow swinging motion to come to rest. Secure the swing so that the seat cannot move during the test. The means of securing the seat shall not affect the outcome of the test. Raise the shot bag a distance of 1 in. above the seat of the swing. Drop the weight onto the seat 50 times with a cycle time of 4 +/− 1s/cycle. The drop height is to be adjusted to maintain the 1 in. drop height as is practical.

We are proposing that sections 7.2.1.2 and 7.2.1.3 of ASTM F 2088–11b be replaced by the following language:

7.2.1.2 Set-up the swing in accordance with the manufacturer's instructions. If the swing seat has more than one height position, recline position, ~~or~~ facing direction, **tray position, or other adjustable feature,** test the product in the configuration most likely to fail.

7.2.1.3 Place the shot bag on the seating surface of the swing and allow swinging motion to come to rest. Secure the swing so that the seat cannot move during the test. The means of securing the seat shall not affect the outcome of the test. Raise the shot bag a distance of 1 in. above the seat of the swing. Drop the weight onto the seat ~~50~~ **500** times with a cycle time of 4 +/- 1s/cycle. The drop height is to be adjusted to maintain the 1 in. drop height as is practical.

5. Seat Design and Seat Failures

a. Description of Hazard

Seat issues account for 16 percent of reported incidents and 12 percent of injuries. Seat issues can be broken down into two subcategories of hazards. One is seat design issues, and the other is seat failure issues. Reports included in the seat design subcategory include seats that lean, or deflect, to one side. If a seat deflects substantially, the infant could fall out of the swing or bump against the swing frame. Some reports include scenarios where infants attempt to reach an object outside the swing, the seat deflects, and the victim falls out of the seat. Swing seat deflection is most common in swings supported by a single swing arm, which offers less support.

Seat failures include the following scenarios:

- The infant swing seat detaches from the swing frame completely;
- The back of the seat does not hold in the upright position and falls unexpectedly;
- The seat itself folds inward; and
- For swings with a fabric seat that fits over a frame, the fabric padding slips off.

In most cases, if the seat fails, the infant will fall out of the seat. In one case, it was determined that a seat failure contributed to an infant's death.

b. Assessment of ASTM F 2088–11b

Currently, ASTM does not require testing for seat deflection. Our testing revealed that some swing seats deflect significantly. After reviewing the incidents reported to us, we noticed that swings supported by a single arm, which might make the swing less structurally sound, may be more likely to have seats that deflect in a way that could be dangerous for the occupant.

Currently, seat failure issues are addressed by dynamic loading (described in section [E][4] of this preamble on broken, detached, and loose swing components) and by static loading, which requires the tester to place a 75-pound weight (or three times the manufacturer's maximum recommended weight, whichever is greater) in the center of the swing seat. At the conclusion of the static load test, if the swing seat fails in any way, for example by detaching from the frame or folding inward, the product fails the static load test.

c. Description of Proposed Changes

In regard to seat design issues, the proposed rule would add a new performance requirement and a new test method to the static load requirements that would measure seat deflection. The proposed new test method would require the tester to place a 5-pound weight onto the seat and measure the distance from the lowest point on the swing seating surface to the floor. Nominally loading the seat with 5 pounds will account for the presence of cloth seats that relax significantly when not weighted, which could interfere with the measurement. The tester then would place a 75-pound weight (or three times the manufacturer's maximum recommended weight, whichever is greater) onto the swing and record the same measurement. The two measurements are compared, and the change in vertical deflection cannot be more than 4 inches. This test will reveal whether the swing is likely to deflect or deform under severe loading conditions. In addition to the seat deflection test, the swing must still meet the current static load requirement (using the same 75-pound weight) and cannot fail in any way that could create a hazardous environment for the child.

In regard to seat failures, we believe that more robust dynamic load testing will reveal any seat failure issues that are likely to occur in the swing. The modification and testing clarification to the dynamic load test, as described in section (E)(4)(c) of this preamble, will enable testers to better assess any hazards related to the seat, such as the possibility that the seat will detach from the swing frame.

d. Proposed Change in Standard

In addition to the modification and testing clarification to the dynamic load test, described in section (E)(4)(c) and contained in section (E)(4)(d) of this preamble, we propose a new static load performance requirement and test method. We are proposing that the following section 6.1.2.1 be added to ASTM F 2088–11b:

6.1.2.1 The swing seat shall not have a change in vertical deflection greater than 4 in. The change in vertical deflection shall be calculated by subtracting the distance measured in 7.2.2.2 from the distance measured in 7.2.2.3.

Currently, ASTM F 2088–11b contains the following test method at section 7.2.2.2:

7.2.2.2 By any necessary means, place a static load of 75 lb (34.1 kg) or 3 times the manufacturer's maximum recommended

weight, whichever is greater, in the center of the seat distributed by a wood block. Gradually apply the weight within 5 s and maintain for 60 s.

We are proposing that section 7.2.2.2 be replaced by the following language and that the language currently found in 7.2.2.2 of ASTM F 2088–11b be moved to 7.2.2.3 and changed as follows:

7.2.2.2 Place a static load of 5 lbm (2.3 kg) in the center of the seat distributed by a wood block. Measure and record the vertical distance from the floor to the lowest point on the infant swing's seating surface. Remove the load.

7.2.2.3 By any necessary means, place a static load of 75 lb (34.1 kg) or 3 times the manufacturer's maximum recommended weight, whichever is greater, in the center of the seat distributed by a wood block. Gradually apply the weight within 5 s and maintain for 60 s. Measure and record the vertical distance from the floor to the lowest point on the loaded infant swing's seating surface.

6. Inadequate Clearance Between the Swing Seat and the Swing Frame

a. Description of Hazard

Thirteen percent of reported incidents are attributable to inadequate space between the infant seat and the swing frame. This hazard is responsible for the second most number of injuries (22%). When there is inadequate clearance between the seat and frame, an infant's head can become caught, or the infant's limbs can hit the swing frame while the swing is in motion.

b. Assessment of ASTM F 2088–11b

We believe that this hazard can be addressed by ensuring that the infant is kept securely within the seat's boundaries. If an infant is unable to maneuver outside the seat's boundaries, the infant's head is unlikely to be trapped in the swing frame or their limbs are unlikely to get into a position where they may hit the frame. The shoulder restraint requirement, mandated in ASTM F 2088–11b for swings with a seat back angle greater than 50°, is sufficient to address situations involving inadequate clearance between the seat and seat frame.

c. Description of Proposed Changes

In section (E)(3)(c) of this preamble, we describe several clarifications to the seat back angle test used to determine which swings require a shoulder harness. These clarifications will result in a more stringent standard, by ensuring that measurements are more accurate and repeatable, thus, reducing the number of injuries associated with swings.

d. Proposed Change in Standard

We propose adding several clarifications to the seat back angle test that is used to determine which swings require a shoulder harness. These clarifications have been discussed previously in section (E)(3)(c) of this preamble, and the proposed changes are contained in section (E)(3)(d) of the preamble.

7. Electrical or Battery Issues

a. Description of Hazard

Infant swings typically rely on a/c power, batteries, or a combination of both, to operate the product. Nine percent of the reports we received related to electrical or battery issues associated with infant swings. Common reports included: The motor overheating, batteries leaking, or the detection of smoke. Issues related to electrical or battery problems accounted for 1 percent of all reported injuries.

b. Assessment of ASTM F 2088–11b

Currently, ASTM F 2088–11b contains standards that regulate battery compartments only. Section 6.7 of ASTM 2088–11b requires that the battery compartment be marked permanently to show the correct battery polarity, size, and voltage. Battery compartments are also required to have a means to contain the electrolyte material in the event that the battery leaks. ASTM 2088–11b also contains a requirement prohibiting nonrechargeable batteries from being recharged with a/c power. In addition, section 8.4 of ASTM 2088–11b requires all swings that use more than one battery to contain warnings. The warnings advise consumers not to mix old and new batteries, not to mix different kinds of batteries, and not to leave batteries in the swing when storing the product for long periods of time. There are no other requirements regarding the design and operation of the electrical components of swings.

c. Description of Proposed Changes

The proposed rule would impose several new requirements to address hazards related to the electrical components of swings. We are proposing: (1) An electrical overload test; (2) an accessible component temperature requirement; and (3) a requirement to ensure that swings that run on a/c power are safe.

Electrical components (such as motors, batteries, and circuit boards) in a swing can overheat, and this can cause the components to melt, smoke, explode, or cause a fire. We are proposing a test to address this hazard; the proposed test is substantially similar to the test found in the ASTM F 963–08, ''Standard Consumer Safety Specification for Toy Safety'' (''ASTM F 963–08''). The proposed test would check to ensure that a normal electrical load cannot overload the electrical circuit. It would require the swing to be locked in a fixed position and operated continuously until a peak temperature can be recorded. For swings that operate continuously, the test would be stopped 60 minutes after the peak temperature is recorded. Under the proposal, a swing will fail the overload test if it causes battery leakage, explosion, smoke, or a fire. For swings that operate on batteries and a/c power, the proposal would require both power sources, as well as any type of battery that can be used, to be tested separately to ensure that they all meet the requirement.

The proposed accessible component temperature requirement would state that, during the electrical overload test, no accessible component may achieve a temperature exceeding 160°. Accessible components are those that a child or caregiver would be able to touch. This test is meant to protect the public from burns caused by very hot electrical components.

The proposed rule also would require swings that run on a/c power (*i.e.,* swings that come with an electrical cord that is plugged into a wall socket) to comply with 16 CFR part 1505, the requirements for electrically operated toys and other electrically operated articles intended for children. The regulations at 16 CFR part 1505 contain established labeling, manufacturing, design, construction, and performance requirements intended to ensure that toys and electrical items intended for children are safe for their use.

The addition of new requirements for electrical components, including the electrical overload test, the accessible component temperature requirement, and the a/c power requirement, will reduce the number of injuries associated with swings. These provisions would ensure that motors and batteries do not overheat and catch fire, that accessible components do not become hot enough to burn a child or a caregiver, and that swings that run on a/c power are safe, as measured by well-established CPSC regulations already in place that govern electrical toys and other products intended for children.

d. Proposed Change in Standard

Currently, the introductory heading of ASTM F 2088–11b section 6.7 is:

6.7 *Swings Containing Battery Compartment(s) (remote control devices are exempt from the requirements in 6.7):*

We are proposing that the introductory heading of section 6.7 of ASTM F 2088–11b be replaced by the following:

6.7 *Electrically Powered Swings* (remote control devices are exempt from the requirements in 6.7):

In addition to complying with the existing sections 6.7.1, 6.7.2, and 6.7.3 of ASTM F 2088–11b (which deal with batteries and battery compartments only), we propose adding the following:

6.7.4 The surfaces of the batteries, switch, motor, or any other accessible electrical components shall not achieve temperatures exceeding 160 °F (71 °C) when tested in accordance with 7.13. At the conclusion of the test, the stalled motor condition shall not cause battery leakage, explosion, smoking, or a fire to any electrical component. This test shall be performed prior to conducting any other testing within the Performance Requirements section.

6.7.5 Swings operating from an a/c power source, nominally a 120-V branch circuit, shall conform to 16 CFR 1505.

We also propose adding the following test method to ASTM F 2088–11b at section 7.13:

7.13 *Electrical Overload Test*—The test shall be conducted using a new swing. The swing shall be tested using fresh alkaline batteries or an a/c power source. If the swing can be operated using both, then both batteries and a/c power must be tested separately. If another battery chemistry is specifically recommended by the manufacturer for use in the swing, repeat the test using the batteries specified by the manufacturer. If the swing will not operate using alkaline batteries, then test with the type of battery recommended by the manufacturer at the specified voltage. The test is to be carried out in a draft-free location, at an ambient temperature of 68 ± 9 °F (20 ± 5 °C).

7.13.1 Operate the swing at the maximum speed setting with the swing seat locked in a fixed position. Do not disable any mechanical or electrical protective device, such as clutches or fuses. Operate the swing continuously, and record peak temperature. The test may be discontinued 60 min after the peak temperature is recorded. If the swing shuts off automatically or must be kept ''on'' by hand or foot, monitor temperatures for 30 s, resetting the swing as many times as necessary to complete the 30 s of operation. If the swing shuts off automatically after an operating time of greater than 30 s, continue the test until the swing shuts off.

8. Instability

a. Description of Hazard

Swing instability occurs when one leg of the swing lifts up or the swing tips over completely. Swing instability accounted for 4 percent of the reported incidents and 2 percent of the reported injuries involved. In some incidents, the swing was on an elevated surface and inched along until it fell off the surface. This scenario resulted in a hospitalization from the fall.

b. Assessment of ASTM F 2088–11b

ASTM F 2088–11b contains performance requirements and test methods meant to prevent swing instability. The first requirement and test method is the ''Unintentional Folding'' test, which requires a force to be applied to the end of the swing leg in the direction normally associated with folding. This test will ensure that the swing will not fold and collapse while in use.

The second requirement and test method is the ''Stability in the Direction of Swing Motion'' test. This test is used on swings that have designs in which the swing moves back and forth with a horizontal swing motion. The test requires that the swing be placed on an inclined surface of 20°. In this position, the swing cannot tip over or it fails the test. The swing is then rotated 180° and again placed on the inclined surface where, again, it must not tip over in order to pass. For swings with a horizontal swing motion, this is the best test to ensure that they will not tip over.

In addition, ASTM F 2088–11b has a warning label requirement to address situations where a consumer might put a swing, usually a smaller travel size swing, on an elevated surface. This action resulted in a very serious injury to a child when the swing fell off the elevated surface. Section 8.3.1(5) of ASTM F 2088–11b requires travel swings to have the following warning: ''Always place swing on floor. Never use on any elevated surface.''

c. Description of Proposed Changes

The proposed rule would clarify the test methods for both the ''Unintentional Folding'' test and the ''Stability in the Direction of Swing Motion'' test. The clarifications are meant to address swing designs that are not tested adequately using the existing requirements.

The current ''Unintentional Folding'' test works well with swings that have an A-frame design. An A-frame swing has two legs that are shaped like the letter ''A,'' with a bar that connects the top of the ''A's.'' Two arms hang from the bar and support the swing. However, some swings on the market have an L-shaped design. These swings have two L-shaped legs that come together at the top. Where the two ''Ls'' join, a single arm hangs down to support the swing. For swings with an L-shaped design, the current test (which requires the force to be placed on the end of the leg in the direction normally associated with folding) will not adequately test the swing to ensure that it will not fold while in use. Our testing on L-shaped infant swing designs revealed that forces placed at the end of the L-shaped legs created a twisting motion. This twisting motion may not exercise the latch to the same extent as a force applied to the end of a leg in an A-frame infant swing.

Additionally, for this test, we want to clarify the location of the applied force. The phrase, ''end of the leg,'' could be interpreted inconsistently over various infant swing leg designs.

Thus, the proposed rule would require that the test address all swing designs, and it would do so by adding language that would require the tester to put the force ''at the lowest point on the leg that results in the greatest force on the latch in the direction normally associated with folding.'' This will adequately test A-frame swings and L-shaped swings.

The proposed rule would make clarifications to the stability test, as well. The current test is appropriate for swings with a horizontal swing motion. Swings with a horizontal swing motion move back and forth. However, some swings move from side to side or have another type of swing motion. For these swings, the current test will not adequately predict stability issues. Therefore, the proposal would change the stability test to account for swings with other types of swing motions. Swings with a horizontal swing motion would continue to be tested in the same way (placing the swing on an inclined surface and then rotating it 180°). However, for swings with other than a horizontal motion, the proposed rule would require the tester to test the swing on the inclined surface in the most onerous swing orientations. This will ensure that all swings will be tested in the position most likely to fail.

Currently, the stability test requires the tester to account for different height positions, recline positions, and facing directions in order to ensure that the swing is safe in any configuration. For both swings with a horizontal swing motion and swings with other types of swing motions, we propose taking into consideration the direction of motion, the tray position, and any other adjustable features to ensure that the swing will be tested adequately in all possible configurations.

The test clarifications to the unintentional folding and stability tests will ensure that all types of swings, in all possible configurations, are adequately tested to ensure that the swing remains upright and functioning while the infant is placed in the swing.

This will reduce the number of injuries associated with swings that fold unexpectedly or tip over.

d. Proposed Change in Standard

Currently, ASTM F 2088–11b contains the following test method at sections 7.3.2.3, 7.3.2.4 and 7.3.2.5:

7.3.2.3 Position the product on the inclined surface with the axis of swinging motion parallel to the stop and the lower most frame member(s) in contact with the stop as shown in Fig. 5. If the product contains an axis of swinging motion that does not remain parallel to the stop during the full cycle of the swinging motion, the product shall be tested in the positions most likely to fail.

7.3.2.4 If the swing seat has more than one height position, recline position, or facing direction, test the product in the configuration most likely to fail.

7.3.2.5 Rotate the swing frame 180° and repeat the steps in 7.3.2.2–7.3.2.4.

We are proposing that the following section 7.3.2.3 replace the existing sections 7.3.2.3, 7.3.2.4 and 7.3.2.5 of ASTM F 2088–11b:

7.3.2.3 For a product with a horizontal axis of swing motion, position the product on the inclined surface with the axis of swinging motion parallel to the stop and the lower most frame member(s) in contact with the stop as shown in Fig. 5. ~~If the product contains an axis of swinging motion that does not remain parallel to the stop during the full cycle of the swinging motion, the product shall be tested in the positions most likely to fail.~~ If the swing seat has more than one height position, recline position, ~~or~~ facing direction, **direction of motion, tray position, or other adjustable feature,** test the product in the configuration most likely to fail. Rotate the swing frame 180° **and repeat the procedure.**

To account for products with a swing motion that is not horizontal, we are proposing that the text of ASTM F 2088–11b section 7.3.2.4 be as follows:

7.3.2.4 For a product with other than a horizontal axis of swing motion, position the product on the inclined surface in the most onerous swing orientation, such that the product is in contact with the stop. If the swing seat has more than one height position, recline position, facing direction, direction of motion, tray position, or other adjustable feature, test the product in the configuration most likely to fail.

Currently, ASTM F 2088–11b contains the following test method at section 7.4.1:

7.4.1 With the unit in the manufacturer's recommended use position, apply a force of 10 lbf (45 N) at the end of a leg in the direction normally associated with folding, while holding opposite leg(s) stationary. Gradually apply the force over 5 s, and maintain for an additional 10 s. Repeat this test on each leg.

We are proposing to replace section 7.4.1 of ASTM F 2088–11b as follows:

7.4.1 With the unit in the manufacturer's recommended use position, apply a force of 10 lbf (45 N) at the ~~end of a leg~~ **lowest point on the leg that results in the greatest force on the latch** in the direction normally associated with folding, while holding opposite leg(s) stationary**.** Gradually apply the force over 5 s, and maintain for an additional 10 s. Repeat this test on each leg.

9. Broken or Detached Toys and Mobiles

a. Description of Hazard

Many swings come with infant toys or mobiles meant to entertain infants in the swing. Two percent of the incident reports and 4 percent of the injury reports are attributable to broken and detached toys and mobiles. Some injuries occurred when mobiles completely detached from the swing and fell onto the child.

b. Assessment of ASTM F 2088–11b

Currently, ASTM F 2088–11b requires toy mobiles included with infant swings to be tested for detachment. The test method, contained in section 7.11 of ASTM F 2088–11b, requires the tester to pull the mobile in a vertical downward direction toward where the occupant would be. A detachment, other than that of a soft toy, is considered a failure.

c. Description of Proposed Changes

The proposed rule would clarify that the standard must account for mobiles that may fail if they are pulled in a direction other than straight downward vertically. It would require that the direction of force be in the most onerous position that is below the horizontal plane. In other words, a child in a swing will always be pulling in a downward direction, but under the proposal, the test would account for a child who pulls down, but slightly to the right or slightly to the left. To help manufacturers and third party conformity assessment bodies, we propose including a graphic in the standard illustrating the area below the horizontal plane. Our proposal would eliminate detachments that might occur from forces applied to the mobile in inadvertent directions, and the proposal will reduce the risk of injuries associated with this hazard.

d. Proposed Change in Standard

Currently, ASTM F 2088–11b contains the following test method at section 7.11.3:

7.11.3 Gradually apply a vertical downward force of 10 lbf in the direction of the occupant to the end of the mobile furthest from the swing attachment point. Apply the force within 5 s and maintain for an additional 10 s.

The proposal would revise section 7.11.3 of ASTM F 2088–11b as follows:

7.11.3 Gradually apply a ~~vertical downward~~ force of 10 lbf ~~in the direction of the occupant~~ to the end of the mobile **or component** furthest from the swing attachment point. **The direction of the force shall be in the most onerous direction that is at or below the horizontal plane passing through the point at which the force is applied (see Fig. 8a).** Apply the force within 5 s ~~and~~ maintain for an additional 10 s **and release within 1 s**. **The test is complete after the release.**

We also propose adding the following Figure 8a, Mobile Attachment Strength, to ASTM F 2088–11b:

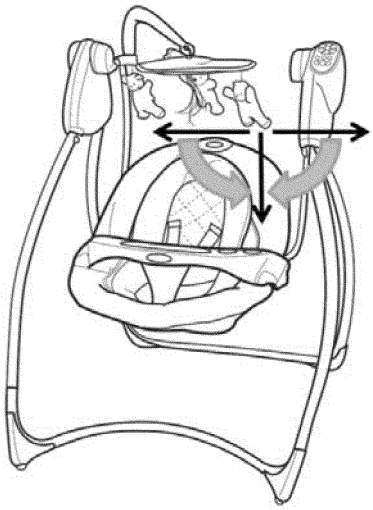

Fig. 8a Mobile Attachment Strength

10. Miscellaneous

a. Description of Hazard

Four percent of the reported incidents and 7 percent of all injuries are attributable to miscellaneous causes. Of the incidents that we found to be product related, most include small parts, including pieces of fabric that detach and can result in a choking hazard. Other reports involve sharp protrusions and surfaces that can cause cuts and scrapes.

b. Assessment of ASTM F 2088–11b

We have evaluated these incidents and have determined that ASTM F 2088–11b addresses these incidents. For example, there are already requirements that prohibit small parts and sharp edges that can pose injury hazards to children. Consequently, we are not proposing any changes based on the incidents reported in this category.

11. Summary of CPSC Recommended Changes to ASTM F 2088–11b

In conclusion, the proposed rule would add two new requirements to ASTM F 2088–11b that will make the standard more stringent than the current voluntary standard and will reduce the risk of injury associated with infant swings: (1) A performance requirement and test method to address electrical overload in infant swing motors and batteries, as well as an accessible component temperature requirement and a requirement to ensure that swings that run on a/c power are safe; and (2) a performance requirement and test method to address seat deflection. We also propose two major modifications to ASTM F 2088–11b that will make the standard more stringent than the current voluntary standard and will reduce the risk of injury associated with infant swings: (1) An increase in the number of test cycles used in the dynamic load test, from 50 cycles to 500 cycles and (2) a modification to the mobile test to account for mobiles that can be pulled in downward directions other than straight down vertically. Finally, the proposal would clarify the test methods for the dynamic load test, the stability test, the unintentional folding test, and the seat back angle measurement method. Each of these clarifications would make the resulting standard more stringent than the current voluntary standard and will result in a reduction of injuries because they will result in more accurate and repeatable testing of infant swings, which will lead to safer products.

F. Effective Date

The Administrative Procedure Act (''APA'') generally requires that the effective date of the rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). To allow time for infant swings to come into compliance, we intend for the standard to become effective 6 months after the publication of the final rule in the **Federal Register**. We invite comment on how long it will take infant swing manufacturers to come into compliance.

G. Regulatory Flexibility Act

1. Introduction

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. §§ 601–612, requires agencies to consider the impact of proposed rules on small entities, including small businesses. Section 603 of the RFA requires us to prepare an initial regulatory flexibility analysis and make it available to the public for comment when the notice of proposed rulemaking is published. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small entities. In addition, it must identify any significant alternatives to the proposed rule that would accomplish the stated objectives of the rule and, at the same time, reduce the economic impact on small businesses. Specifically, the initial regulatory flexibility analysis must contain:

- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities subject to the requirements, and the type of professional skills necessary for the preparation of reports or records; and
- Identification, to the extent possible, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

2. The Market

Based on a 2005 survey conducted by American Baby Group titled, ''2006 Baby Products Tracking Study,'' along with Centers for Disease Control and Prevention birth data, we estimate that approximately 2.7 million infant swings are sold in the United States each year. We estimate that there are at least 10 manufacturers or importers supplying infant swings to the U.S. market. Eight of these firms are domestic manufacturers, and two of these firms are domestic importers with foreign parent companies.

Under the U.S. Small Business Administration (''SBA'') guidelines, a manufacturer of infant swings is small if it has 500 or fewer employees, and an importer is considered small if it has 100 or fewer employees. Based on these guidelines, six domestic manufacturers and both domestic importers known to supply infant swings to the U.S. market are small businesses. The remaining entities are two large domestic manufacturers. There may be additional unknown small manufacturers and importers operating in the U.S. market.

The JPMA runs a voluntary certification program for juvenile products. Certification under the JPMA program is based on the ASTM voluntary infant swing standard. Two of the six small manufacturers produce swings that are certified as compliant with the ASTM voluntary infant swing standard by the JPMA. Of the importers, one imports swings that have been certified as compliant with the ASTM voluntary infant swing standard.

3. Impact on Small Business

a. Costs of Complying With the Voluntary Standard

Section 104(b) of the CPSIA requires us to promulgate consumer product safety standards for durable infant and toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if we conclude that more stringent requirements would further reduce the risk of injury associated with the product. The extent to which each firm will be impacted by the proposed rule depends on whether the firm's infant swings currently comply with the ASTM voluntary standard. Small firms whose infant swings already comply with the voluntary standard will only potentially incur costs related to our recommended additions and modifications to the standard.

b. Small Manufacturers

Two of the small manufacturers have infant swings known to comply with the voluntary standard. The costs, if any, to these firms associated with our recommended changes are not expected to be significant. Any impact may be mitigated if the costs are treated as new product expenses and amortized over time.

The costs to the four manufacturing firms whose infant swings may not be compliant with the voluntary standard could be more significant. Meeting the existing voluntary standard could require manufacturers to redesign their product. However, we believe that the actual costs to most manufacturers will not be high, and any costs that are incurred can be mitigated if they are treated as new product expenses and amortized over time. This scenario also assumes that the four firms whose swings are not JPMA certified do not meet the ASTM voluntary standard. In fact, we have identified many instances in which a juvenile product not certified by the JPMA does comply with the ASTM voluntary standard. To the extent that the firms may already supply infant swings that meet the ASTM voluntary standard, the costs incurred will be less.

c. Small Importers

Importers of infant swings would need to find an alternate source if their existing supplier does not come into compliance with the proposed standard. Purchasing compliant, higher quality infant swings could increase the cost of the product. Importers could pass on some of these increased costs to consumers. Some importers could respond to the rule by discontinuing the import of infant swings. The impact of this decision could be mitigated by replacing swings with a different infant or toddler product. Deciding to import an alternative infant or toddler product would be a reasonable and realistic way to offset any lost revenue.

Both of the known importers are subsidiaries importing their infant swings from a foreign parent company. Finding an alternative supply source would not be an option for these firms. However, they could respond to the rule by discontinuing the import of their noncompliant infant swings and replacing them with another infant or toddler product. This is more likely to be necessary for the importer supplying infant swings that are not believed to be compliant with the voluntary standard.

d. Costs of Complying With Our Recommended Changes

We are proposing two new requirements, two major modifications, and several testing clarifications to ASTM F 2088–11b.

The proposed electrical and battery requirements would result in low or no costs to small firms. A firm's inability to comply with these requirements would most likely be the result of a defect that would be remedied by replacing the battery or other power source. According to one source in the industry, it is already fairly common for manufacturers to test their products to ensure that the electrical system will not overheat.

The proposed seat deflection test, depending on the swing design, would result in some costs to smaller firms. Swings likely to be affected are those in which a single swing arm supports the seat. In most cases, manufacturers of these types of swings would be able to produce infant swings that comply with the proposed requirement by using stronger materials. It is possible that a few firms may opt to redesign their

product, which would be more costly. In either case, only a small number of firms will be affected.

The proposed modifications to the dynamic load test, which would increase the number of cycles in the test from 50 to 500, may have an impact on some swing manufacturers but have little or no impact on others. If there are modifications associated with this change, they might be substantial. Some products might only need stronger screws or a better way of attaching swing components. Some swings might require a complete product redesign. Therefore, it is unclear how many products will be affected by modifying this requirement and what the costs will be.

We expect that the proposed modification to the infant mobile requirement would have a significant impact on swing manufacturers whose products require modifications to comply. Not only would these products need to be redesigned, the hard tool used to manufacture the swing component would need to be changed. The hard tool is the mold of the desired infant swing component shape. During the manufacturing process, the component is made by injecting plastic or other material into the tool. Hard tools are usually made by an outside firm, which means that production of the swing would cease until the tool is designed and created. While this will be costly for some firms, it is expected to impact only a small number of firms whose mobiles would not meet the proposed change.

The testing clarifications would not require product modifications. These changes are meant to ensure that testing is consistent and repeatable. There would be no economic impact on small firms as a result of these changes.

4. Alternatives

Under the CPSIA, we must promulgate consumer product safety standards that are substantially the same as the voluntary standards for durable infant or toddler products, or promulgate consumer product safety standards that are more stringent than the voluntary standards, if the Commission determines that more stringent standards would further reduce the risk of injury associated with such products. Adopting the voluntary standard without change is one alternative that could reduce the potential cost to small businesses. However, small firms that are not compliant with the voluntary rule still would incur costs to become compliant with the existing ASTM standard for infant swings, regardless of whether we recommend changes.

A second alternative is to set an effective date longer than 6 months to allow firms additional time to comply with the mandatory standard. More time would give manufacturers an opportunity to make any necessary changes to their product and provide importers time to find an alternative supply source or replace noncompliant swings with an alternative infant or toddler product, if necessary.

5. Conclusion of Initial Regulatory Flexibility Analysis

It is possible that the proposed standard, if finalized, could have a significant impact on some small businesses whose infant swings are not ASTM compliant. Further, it is possible that some swings that are already ASTM compliant might incur costs associated with our recommended changes. For manufacturers, the extent of these costs could entail expensive product redesign. Importers may need to find alternative sources of infant swings or replace swings with another infant or toddler product.

We invite comments describing:

- The possible impact of this rule on small manufacturers and importers; and
- Significant alternatives to the proposed rule that would accomplish the stated objectives of the proposed rule, and at the same time, reduce the economic impact on small businesses.

H. Environmental Considerations

The Commission's regulations address whether we are required to prepare an environmental assessment or an environmental impact statement. If our rule has ''little or no potential for affecting the human environment'' it will be categorically exempted from this requirement. 16 CFR 1021.5(c)(1). The proposed rule falls within the categorical exemption.

I. Paperwork Reduction Act

1. Introduction

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- A title for the collection of information;
- A summary of the collection of information;
- A brief description of the need for the information and the proposed use of the information;
- A description of the likely respondents and proposed frequency of responses to the collection of information;
- An estimate of the burden that shall result from the collection of information; and
- Notice that comments may be submitted to the OMB.

2. Title and Description of the Collection of Information

The title for this collection of information is ''Safety Standard for Infant Swings.'' The proposed rule would require each infant swing to comply with ASTM F 2088–11b, Standard Consumer Safety Specification for Infant Swings. Sections 8.1 and section 9.1 of ASTM F 2088–11b contain requirements for marking, labeling, and instructional literature. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3). Specifically, 5 CFR 1320.3(c)(2) states that a collection of information includes information that an agency requires another entity, such as an infant swing manufacturer or importer, to obtain or compile for the purpose of disclosure to the public through labeling.

Section 8.1 of ASTM F 2088–11b requires that the following items be clearly and legibly marked on each infant swing and its retail carton:

- The name and the place of business (city, state, and zip code) or telephone number of the manufacturer, importer distributor, or seller;
- A model number, stock number, catalog number, item number, or other symbol expressed numerically, or otherwise, such that only articles of identical construction, composition, and dimensions bear identical markings; and
- A code mark or other means that identifies the date (month and year, as a minimum) of manufacture.

This information is necessary in order to assist us and consumers when there is a need to identify: (1) The firm supplying the infant swing, (2) the model number (or other identifying mark) of the infant swing, and (3) the date the swing was manufactured.

Section 9.1 of ASTM F 2088–11b requires all firms supplying swings to provide written, easy to read, instructions regarding assembly, maintenance, cleaning, and use. Instructional literature ensures that consumers are aware of how to use the product as the manufacturer intended.

The information required in sections 8.1 and 9.1 of ASTM F 2088–11b is intended to address safety issues that might arise with the product. The

instructional literature in section 9.1 of ASTM F 2088–11b is meant to prevent safety problems by providing assembly and maintenance information to consumers. The information required in section 8.1 of ASTM F 2088–11b is intended to help us and the consumer identify the firm and the product, should a safety issue arise.

3. Description of the Respondents and the Estimated Burden

The respondents affected by this collection of information are manufacturers or importers of infant swings. We estimate the burden of this collection of information as follows:

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR Section	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
1223.2(a)	5	5	25	1	25

There are 10 known entities supplying infant swings to the U.S. market. Five entities produce labels that comply with the standard. We assume these five entities produce labels that comply with the standard because they claim that their infant swings comply with ASTM F 2088–11b, and the swings are certified by the JPMA as conforming to ASTM F 2088–11b. Therefore, we assume that their products meet the marking and labeling requirements of ASTM F 2088–11b. For these entities, there would be no additional burden. Under the OMB's regulations at 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are ''usual and customary.'' Therefore, because these five entities already produce labels that comply with the standard, we estimate tentatively, that with respect to these five entities, there are no burden hours associated with section 8.1 of ASTM F 2088–11b because any burden associated with supplying these labels would be ''usual and customary'' and not within the definition of ''burden'' under the OMB's regulations.

We assume that the remaining five entities use labels on their products and their packaging but may need to modify their existing labels. Based on our experience with other rules under section 104 of the CPSIA, we estimate that the time required to make these modifications is about 1 hour per model. Each entity supplies an average of five different models of infant swings; therefore, the estimated burden hours associated with labels is 1 hour per model × 5 entities × 5 models per entity = 25 hours.

We estimate that the hourly compensation for the time required to create and update labels is $28.36. We base the hourly compensation figure on data available from the U.S. Bureau of Labor Statistics. This information can be found in the U.S. Bureau of Labor Statistics' September 2011 data in Table 9, ''Employer Costs for Employee Compensation,'' for all sales and office workers in goods-producing private industries, which can be found at: *http://www/bls.gov/ncs.* Therefore, the estimated annual cost to industry associated with the proposed labeling requirements is $709.00 ($28.36 per hour × 25 hours = $709.00).

Section 9.1 of ASTM F 2088–11b requires instructions to be supplied with the product. Infant swings are products that generally require assembly, and products sold without such information would not be able to compete successfully with products supplying this information. Under the OMB's regulations at 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are ''usual and customary.'' Therefore, because we are unaware of infant swings that generally require some installation but lack any instructions to the user about such installation, we tentatively estimate that there are no burden hours associated with section 9.1 of ASTM F 2088–11b because any burden associated with supplying instructions with infant swings would be ''usual and customary'' and not within the definition of ''burden'' under the OMB's regulations.

4. Conclusion

Based on this analysis, the proposed standard for infant swings would impose a burden to industry of 25 hours at a cost of $709.00 annually.

5. Request for Comments

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review. Anyone who would like to submit comments regarding information collection should do so by March 12, 2012, to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this notice).

Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;
- The accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- The estimated burden hours associated with label modification, including any alternative estimates.

J. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety rules,'' thus implying that the preemptive effect of section 26(a) of the CPSA would apply.

Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when the rule becomes effective.

K. Testing and Certification

Once there is a safety standard in effect for infant swings, it will be unlawful for anyone to manufacture, distribute, or import an infant swing into the United States that is not in conformity with this standard. 15 U.S.C. 2068(1).

In addition, section 14(a)(2) of the CPSA, 15 U.S.C. 2063(a)(2), imposes the requirement that products subject to a children's product safety rule must be tested by a third party conformity assessment body accredited by the Commission to test the product. As discussed in section A of this preamble, section 104(b)(1)(B) of the CPSIA refers to standards issued under this section as ''consumer product safety standards.'' Under section 14(f)(1) of the CPSA, 15 U.S.C. 2063(f)(1), the term ''children's product safety rule'' includes all standards enforced by the Commission. Thus, the infant swing standard will be a children's product safety rule, subject to third party testing and certification.

Before the requirement for third party testing and certification for infant swings can go into effect, we must issue a notice of requirements to explain how laboratories can become accredited as third party conformity assessment bodies to test infant swings to the new safety standard. We plan to issue the notice of requirements in the future.

L. Request for Comments

This proposed rule begins a rulemaking proceeding under section 104(b) of the CPSIA to issue a consumer product safety standard for infant swings. We invite all interested persons to submit comments on any aspect of the proposed rule. In particular, we seek comments on the following:

- We discuss slump-over deaths in section (E)(2) of this preamble. We invite comments related to whether it would reduce the risk of slump-over deaths if we revise the standard to state that infants who cannot hold their head up should not be placed in any infant swing, or in the alternative, whether infants who cannot hold their head up should only be placed in cradle swings, which allow an infant to lie flat. We invite comments related to whether the warning statement contained in section 8.3.1(4) of ASTM F 2088–11b (which requires the following warning label on all infant swings having an adjustable seat recline with a seat back angle greater than 50°: ''Use only in most reclined seat position until infant can hold head up unassisted'') is sufficient to warn caregivers of the risk of slump-over deaths. We also invite comments related to whether 50° is the appropriate seat back angle to use in the warning, and what warnings should be on swings that do not have an adjustable seat back; and
- We discuss seat deflection hazards in section (E)(5) of this preamble. If a swing seat deflects, or leans, substantially, an infant could fall out of the swing or bump against the frame. We invite comments on whether the proposed performance requirement and test method adequately will predict whether a swing seat is likely to deflect.
- We discuss electrical and battery issues in section (E)(7) of this preamble. Some swings operate using batteries but can be powered alternatively with an a/c adaptor. Our proposed test would require that each of the power sources meet the requirements. Additionally, if alternative batteries are specified by the manufacturer as usable to power the swing, they would also be required to be tested. The proposed test is to be conducted using new swings. This may require more than one swing to be tested in order to independently test each type of battery and/or a/c power adaptor that could be used with the swing. We invite comments describing whether there is an alternate test method that would accomplish the stated objectives of the test and, at the same time, reduce the cost on manufacturers.
- Infant swings are regulated by a children's product safety rule and are subject to testing that must be performed according to a notice of requirements. The Commission seeks comment on methods to ensure that, when the existing safety rule for infant swings and its notice of requirements must be amended, the effective dates of the notice of requirements and the amended infant swings safety rule are aligned such that no infant swings are subject to a notice of requirements that is inconsistent with the infant swings safety rule in effect.

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

List of Subjects in 16 CFR Part 1223

Consumer Protection, Imports, Incorporation by Reference, Infants and Children, Labeling, Law Enforcement, Safety and Toys.

Therefore, the Commission proposes to amend Title 16 of the Code of Federal Regulations by adding part 1223 to read as follows:

PART 1223—SAFETY STANDARD FOR INFANT SWINGS

Sec.
1223.1 Scope.
1223.2 Requirements for infant swings.

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, § 104, 122 Stat. 3016 (August 14, 2008).

§ 1223.1 Scope.

This part establishes a consumer product safety standard for infant swings.

§ 1223.2 Requirements for Infant Swings.

(a) Except as provided in paragraph (b) of this section, each infant swing must comply with all applicable provisions of ASTM F 2088–11b, Standard Consumer Safety Specification for Infant Swings, approved on October 1, 2011. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal regulations/ibr_locations.html.*

(b) Comply with the ASTM F 2088–11b standard with the following additions or exclusions:

(1) In addition to complying with section 6.1.2 of ASTM 2088–11b, comply with the following:

(i) 6.1.2.1 The swing seat shall not have a change in vertical deflection greater than 4 in. The change in vertical deflection shall be calculated by subtracting the distance measured in 7.2.2.2 from the distance measured in 7.2.2.3.

(2) Instead of complying with the introductory heading in 6.7 of ASTM 2088–11b, comply with the following:

(i) 6.7 *Electrically Powered Swings* (remote control devices are exempt from the requirements in 6.7):

(3) In addition to complying with 6.7.3 of ASTM 2088–11b, comply with the following:

(i) 6.7.4 The surfaces of the batteries, switch, motor, or any other accessible electrical components shall not achieve temperatures exceeding 160 °F (71° C) when tested in accordance with 7.13. At the conclusion of the test, the stalled

motor condition shall not cause battery leakage, explosion, smoking, or a fire to any electrical component. This test shall be performed prior to conducting any other testing within the Performance Requirement section.

(ii) 6.7.5 Swings operating from an a/c power source, nominally a 120–V branch circuit, shall conform to 16 CFR 1505.

(4) Instead of complying with section 7.2.1.2 of ASTM 2088–11b, comply with the following:

(i) 7.2.1.2 Set-up the swing in accordance with the manufacturer's instructions. If the swing seat has more than one height position, recline position, facing direction, tray position, or other adjustable feature, test the product in the configuration most likely to fail.

(5) Instead of complying with 7.2.1.3 of ASTM 2088–11b, comply with the following:

(i) 7.2.1.3 Place the shot bag on the seating surface of the swing and allow swinging motion to come to rest. Secure the swing so that the seat cannot move during the test. The means of securing the seat shall not affect the outcome of the test. Raise the shot bag a distance of 1 in. above the seat of the swing. Drop the weight onto the seat 500 times, with a cycle time of 4 ± 1s/cycle. The drop height is to be adjusted to maintain the 1 in. drop height as is practical.

(6) Instead of complying with section 7.2.2.2 of ASTM 2088–11b, comply with the following:

(i) 7.2.2.2 Place a static load of 5 lb (2.3 kg) in the center of the seat distributed by a wood block. Measure and record the vertical distance from the floor to the lowest point on the infant swing's seating surface. Remove the load.

(7) In addition to complying with the changes to section 7.2.2.2 of ASTM 2088–11b as described in paragraph (b)(6) of this section, comply with the following:

(i) 7.2.2.3 By any necessary means, place a static load of 75 lb (34.1 kg) or 3 times the manufacturer's maximum recommended weight, whichever is greater, in the center of the seat distributed by a wood block. Gradually apply the weight within 5 s and maintain for 60 s. Measure and record the vertical distance from the floor to the lowest point on the loaded infant swing's seating surface.

(8) Instead of complying with section 7.3.2.3 of ASTM 2088–11b, comply with the following:

(i) 7.3.2.3 For a product with a horizontal axis of swing motion, position the product on the inclined surface with the axis of swinging motion parallel to the stop and the lower most frame member(s) in contact with the stop as shown in Fig. 5. If the swing seat has more than one height position, recline position, facing direction, direction of motion, tray position, or other adjustable feature, test the product in the configuration most likely to fail. Rotate the swing frame 180° and repeat the procedure.

(9) Instead of complying with section 7.3.2.4 of ASTM 2088–11b, comply with the following:

(i) 7.3.2.4 For a product with other than a horizontal axis of swing motion, position the product on the inclined surface in the most onerous swing orientation such that the product is in contact with the stop. If the swing seat has more than one height position, recline position, facing direction, direction of motion, tray position, or other adjustable feature, test the product in the configuration most likely to fail.

(10) Do not comply with 7.3.2.5 of ASTM 2088–11b.

(11) Instead of complying with section 7.4.1 of ASTM 2088–11b, comply with the following:

(i) 7.4.1 With the unit in the manufacturer's recommended use position, apply a force of 10 lbf (45 N) at the lowest point on the leg that results in the greatest force on the latch in the direction normally associated with folding, while holding the opposite leg(s) stationary. Gradually apply the force over 5 s, and maintain for an additional 10 s. Repeat this test on each leg.

(12) Instead of complying with section 7.11.3 of ASTM 2088–11b, comply with the following:

(i) 7.11.3 Gradually apply a force of 10 lbf to the end of the mobile or component furthest from the swing attachment point. The direction of force shall be in the most onerous direction that is at or below the horizontal plane passing through the point at which the force is applied (see Fig. 8a). Apply the force within 5 s, maintain for an additional 10 s, and release within 1 s. The test is complete after the release.

(13) In addition to Figure 8 of ASTM 2088–11b, use the following:

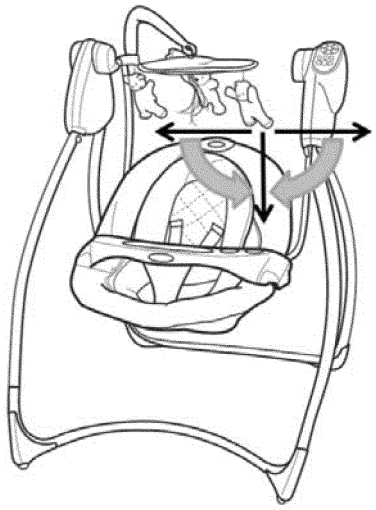

Figure 8a Mobile Attachment Strength

(14) Instead of complying with section 7.12 of ASTM 2088–11b, comply with the following:

(i) 7.12 *Seat Back Angle Measurement*—Place the back of the swing in the most upright use position. Remove positioning accessories, including pillows. Orient the belt restraint segments to limit the interaction with the hinged boards. Place the hinged boards with the hinged edge into the junction of the swing back and seat (see Fig. 8). Place the inclinometer on the floor, and zero the reading. Manually pivot the swing to its furthermost back position. While maintaining this position, place the inclinometer up against the back recline board to obtain the seat back angle as shown in Fig. 9. Hinged boards shall be made of C1020 steel using a 4 by 4 in. (101 by 101 mm) plate hinged to a 4 by 9 in. (101 by 225 mm) plate. The thicknesses shall be adjusted so that the mass is equal to 17.5 lbm.

(15) In addition to complying with the changes to section 7.12 of ASTM 2088–11b as described in paragraph (b)(14) of this section, comply with the following:

(i) 7.13 *Electrical Overload Test*—The test shall be conducted using a new swing. The swing shall be tested using fresh alkaline batteries or an a/c power source. If the swing can be operated using both, then both batteries and a/c power must be tested separately. If another battery chemistry is specifically recommended by the manufacturer for use in the swing, repeat the test using the batteries specified by the manufacturer. If the swing will not operate using alkaline batteries, then test with the type of battery recommended by the manufacturer at the specified voltage. The test is to be carried out in a draft-free location, at an ambient temperature of 68 +/ − 9 °F (20 +/ − 5° C).

(ii) 7.13.1 Operate the swing at the maximum speed setting with the swing seat locked in a fixed position. Do not disable any mechanical or electrical protective device, such as clutches or fuses. Operate the swing continuously, and record peak temperature. The test may be discontinued 60 min. after the peak temperature is recorded. If the swing shuts off automatically or must be kept ''on'' by hand or foot, monitor temperatures for 30 s, resetting the swing as many times as necessary to complete the 30 s of operation. If the swing shuts off automatically after an operating time of greater than 30 s, continue the test until the swing shuts off.

Dated: February 2, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–2820 Filed 2–9–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1172]

RIN 1625–AA00

Safety Zones; America's Cup World Series, East Passage, Narragansett Bay, RI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two temporary safety zones in the navigable waters of the East Passage, Narragansett Bay, Rhode Island, during the America's Cup World Series sailing vessel racing event. This safety zone is intended to safeguard mariners from the hazards associated with high-speed, high-performance sailing vessels competing in America's Cup-class races on the waters of the East Passage, Narragansett Bay, Rhode Island. Vessels will be prohibited from entering into, transiting through, mooring, or anchoring within these safety zones during the effective period unless authorized by the Captain of the Port (COTP), Southeastern New England.

DATES: Comments and related material must be received by the Coast Guard on or before April 10, 2012. Requests for public meetings must be received by the Coast Guard on or before March 2, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1172 using any one of the following methods:

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

(2) *Fax:* (202) 493–2251.

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

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

To avoid duplication, please use only one of these 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 proposed rule, call or email Mr. Edward G. LeBlanc, Waterways Management Division at Coast Guard Sector Southeastern New England, telephone (401) 435–2351, email *Edward.G.LeBlanc@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–1172), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an 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 ''Proposed Rule'' and insert ''USCG–2011–1172'' 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 comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–1172'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before March 2, 2012, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

This rule is necessary to provide for the safety of life and navigation, for both participants and spectators involved with the America's Cup World Series in the vicinity of Newport, RI.

Discussion of Proposed Rule

The state of Rhode Island Economic Development Corporation (RI EDC) is sponsoring the America's Cup World Series from June 22 to July 1, 2012, in the East Passage of Narragansett Bay in the vicinity of Newport, RI. The Series is composed of daily racing of high-speed, high-performance sailing vessels in the East Passage of Narragansett Bay, Rhode Island, adjacent to Newport. These races are part of a world-wide series of races designed to identify an international challenger to compete for the America's Cup in final event of the racing series, scheduled for 2013 in San Francisco, California. The racing of these America's Cup-class vessels in Narragansett Bay is expected to generate national and international media coverage, and attract thousands of spectators on hundreds of recreational vessels and numerous excursion vessels.

The Coast Guard is establishing safety zones in conjunction with the America's Cup World Series to ensure the protection of the maritime public and event participants from the hazards associated with these events. The Coast Guard anticipates some concern by mariners, especially commercial vessel operators, that vessel transits through the East Passage of Narragansett Bay may be restricted for a portion of each day for 10 consecutive days. The East Passage of Narragansett Bay is the site of many marine events each year and vessel traffic, particularly recreational vessel traffic, frequently transit the Bay using the West Passage so as to avoid or minimize any delay. The West Passage of Narragansett Bay may also be a viable option for many tug/barge combinations and smaller commercial vessels.

Some commercial and/or recreational vessels may require or desire to transit the East Passage of Narragansett Bay for a variety of reasons, including destination, familiarity with the waterway, tide restrictions, etc. Recreational vessels may be able to continue transits through the East Passage, even during enforcement of these safety zones, as there will be sufficient room for most recreational vessels to pass to the west of the safety zones. Also, the Coast Guard routinely works with the local marine pilot organization and shipping agents to coordinate vessel transits during marine events in the East Passage, and will continue to do so for the ACWS to avoid major interruptions to shipping schedules.

The Coast Guard proposes to add two temporary safety zones under 33 CFR T165.1172.

One temporary safety zone, labeled safety zone ''North'', will extend from Newport Harbor in the vicinity of Fort Adams, across the East Passage to west of Rose Island.

A second temporary safety zone, labeled safety zone ''South'', will extend from the vicinity of Castle Hill, across the East Passage and northeast to a point west of Goat Island.

The ACWS will require use of only one safety zone each day, either the ''North'' or ''South'' safety zone, depending on wind direction or other environmental factors. The actual safety zone to be enforced will be announced no later than 10 a.m. each day via Coast Guard broadcast notice to mariners and local media. Safety zone enforcement will be effective from Friday, June 22, 2012 through Sunday, July 1, 2012, and will begin each day at 11 a.m. and continue until the ACWS races are completed for the day, but no later than 5 p.m.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

This proposed 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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: Vessels will only be restricted from the East Passage of Narragansett Bay from the designated safety zone for a maximum of six hours per day for a maximum of 10 days; there is an alternate route, the West Passage of Narragansett Bay, that does not add substantial transit time, is already routinely used by mariners, and will not be affected by these safety zones; many vessels, especially recreational vessels, may transit in all portions of the affected waterway except for those areas covered by the proposed safety zones; and vessels may enter or pass through

the affected waterway with the permission of the COTP or the COTP's representative.

Notifications of the ACWS and associated safety zones will be made to mariners through the Rhode Island Port Safety Forum, local Notice to Mariners, event sponsors, and local media well in advance of the event.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: owners or operators of vessels intending to transit, fish, or anchor in the East Passage of Narragansett Bay, Rhode Island, during the ACWS races.

The proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: vessels will only be restricted from the designated safety zone for a maximum of six hours per day for a maximum of 10 days; vessels may transit in all portions of the affected waterway except for those areas covered by the proposed safety zones, and vessels may enter or pass through the affected waterway with the permission of the COTP or the COTP's representative.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action appears to be one of a category of actions which do not individually or cumulatively have a

significant effect on the human environment.

A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of temporary safety zones in conjunction with the America's Cup World Series, a high-speed, high-performance sailing vessel racing event. It appears that this action will qualify for Coast Guard Categorical Exclusion (34)(g), as described in figure 2–1 of the Commandant Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new § 165.T1172 to read as follows:

§ 165.T1172 Safety Zones; America's Cup World Series, East Passage, Narragansett Bay, RI.

(a) *Location.* The following areas are safety zones:

(1) Safety zone ''North'', an area bounded by the following coordinates:

1. 41–29.806 N, 071–21.504 W
2. 41–30.049 N, 071–20.908 W
3. 41–28.883 N, 071–19.952 W
4. 41–28.615 N, 071–19.952 W

(2) Safety zone ''South'', an area bounded by the following coordinates:

1. 41–28.432 N, 071–21.628 W
2. 41–28.898 W, 071–20.892 W
3. 41–29.992 W, 071–21.013 W
4. 41–29.287 N, 071–20.406 W
5. 41–28.894 N, 071–19.958 W
6. 41–28.085 N, 071–21.211 W

(b) *Enforcement Period.* Vessels will be prohibited from entering these safety zones during the America's Cup World Series sailing vessel racing events between 11 a.m. and 5 p.m. from Friday, June 22, 2012 to Sunday, July 1, 2012.

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

(1) Designated Representative. A ''*designated representative*'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Southeastern New England (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Patrol Commander. The Coast Guard may patrol each safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.''

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

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the safety zones established in conjunction with the America's Cup World Series, East Passage, Narragansett Bay, Newport, RI. These regulations may be enforced for the duration of the event.

(2) No later than 10 a.m. each day of the event, the Coast Guard will announce via Safety Marine Information Broadcasts and local media which of the safety zones, either ''North'' or ''South'', will be enforced for that day's America's Cup World Series races.

(3) Vessels may not transit through or within the safety zones during periods of enforcement without Patrol Commander approval. Vessels permitted to transit must operate at a no-wake speed, in a manner which will not endanger participants or other crafts in the event.

(4) Spectators or other vessels shall not anchor, block, loiter, or impede the movement of event participants or official patrol vessels in the safety zones unless authorized by an official patrol vessel.

(5) The Patrol Commander may control the movement of all vessels in the safety zones. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(6) The Patrol Commander may delay or terminate the ACWS at any time to ensure safety. Such action may be justified as a result of weather, traffic density, spectator operation or participant behavior.

Dated: January 28, 2012.

V. B. Gifford, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Southeastern New England.

[FR Doc. 2012–3085 Filed 2–9–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2011–0086]

RIN 0651–AC74

Changes To Implement Derivation Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes new rules to implement the provisions of the Leahy-Smith America Invents Act that create a new derivation proceeding to be conducted before the Patent Trial and Appeal Board (Board). These provisions of the Leahy-Smith America Invents Act will take effect on March 16, 2013, eighteen months after the date of enactment, and apply to applications for patent, and any patent issuing thereon, that are subject to first-inventor-to-file provisions of the Leahy-Smith America Invents Act.

DATES: The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before April 10, 2012 to ensure consideration.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *derivation@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Judge Michael Tierney, Derivation Proposed Rules.''

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. *See* the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Board of Patent Appeals and Interferences, currently located in Madison East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Michael Tierney, Lead Administrative Patent Judge, Richard Torczon, Administrative Patent Judge, Sally Lane, Administrative Patent Judge, and Sally Medley, Administrative Patent Judge, Board of Patent Appeals and Interferences, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION: On September 16, 2011, the Leahy-Smith America Invents Act was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)). The purpose of the Leahy-Smith America Invents Act and these proposed regulations is to establish a more efficient and streamlined patent system. The preamble of this notice sets forth in detail the procedures by which the Board will conduct a new administrative proceeding called a derivation proceeding. Derivation proceedings were created to ensure that the first person to file the application is actually a true inventor. This new proceeding will ensure that a person will not be able to obtain a patent for the invention that he did not actually invent. If a dispute arises as to which of two applicants is a true inventor (as opposed to who invented it first), it will be resolved through derivation proceeding by the Board. The USPTO is engaged in a transparent process to create the procedures for derivation proceedings. The proposed rules would provide a set of rules relating to Board trial practice for derivation proceedings.

Section 3(i) of the Leahy-Smith America Invents Act amends 35 U.S.C. 135 to provide for derivation proceedings and to eliminate the interference practice as to applications and patents having an effective filing date on or after March 16, 2013 (with a few exceptions). Derivation proceedings will be conducted in a manner similar to *inter partes* reviews and post-grant reviews. Unlike patent interferences, derivations will be conducted in a single phase without the use of a ''count.'' An inventor seeking a derivation proceeding must file an application. 35 U.S.C. 135(a). An inventor, however, may copy an alleged deriver's application, make any necessary changes to reflect accurately what the inventor invented, and provoke a derivation proceeding by the timely filing of a petition and fee.

In particular, 35 U.S.C. 135(a), as amended, will provide that an applicant for patent may file a petition to institute a derivation proceeding in the Office. 35 U.S.C. 135(a), as amended, will provide that the petition must state with particularity the basis for finding that a named inventor in the earlier application derived the claimed invention from an inventor named in the petitioner's application and, without authorization, filed the earlier application. 35 U.S.C. 135(a), as amended, also will provide that the petition must be filed within one year of the first publication by the earlier applicant of a claim to the same or substantially the same invention, made under oath, and be supported by substantial evidence. 35 U.S.C. 135(a), as amended, will also provide that if the Director determines that the petition demonstrates that the standards for instituting a derivation proceeding are met, the Director may institute a derivation proceeding and that the determination of whether to initiate a derivation proceeding is final and nonappealable. A derivation is unlikely to be declared even where the Director thinks the standard for instituting a derivation proceeding is met if the petitioner's claim is not otherwise in condition for allowance. *Cf. Brenner* v. *Manson,* 383 U.S. 519, 528 n.12 (1966); *accord Ewing* v. *Fowler Car Co.,* 244 U.S. 1, 7 (1917).

35 U.S.C. 135(b), as amended, will provide that, once a derivation proceeding is initiated, the Patent Trial and Appeal Board will determine whether a named inventor in the earlier application derived the claimed invention from a named inventor in the petitioner's application and, without authorization, filed the earlier application. 35 U.S.C. 135(b), as amended, will also provide that the Patent and Trial and Appeal Board may correct the naming of the inventor of any application or patent at issue in appropriate circumstances, and that the Director will prescribe regulations for the conduct of derivation proceedings, including requiring parties to provide sufficient evidence to prove and rebut a claim of derivation.

35 U.S.C. 135(c), as amended, will provide that the Patent Trial and Appeal Board may defer action on a petition for derivation proceeding for up to three months after a patent is issued from the earlier application that includes a claim that is the subject of the petition. 35 U.S.C. 135(c), as amended, will further provide that the Patent Trial and Appeal Board also may defer action on a petition for a derivation proceeding or stay the proceeding after it has been initiated until the termination of a proceedings under chapter 30, 31, or 32 involving the patent of the earlier applicant.

35 U.S.C. 135(d), as amended, will provide that a decision that is adverse to claims in an application constitutes the final refusal of the claims by the Office, while a decision adverse to claims in a patent constitutes cancellation of the claims, if no appeal or other review of the decision has been taken or had. 35 U.S.C. 135(d), as amended, will provide that a notice of cancellation must be endorsed on copies of the patent distributed after the cancellation.

Section 3(i) of the Leahy-Smith America Invents Act further adds two new provisions, 35 U.S.C. 135(e) and (f). In particular, new paragraph (e) will provide that the parties to a derivation proceeding may terminate the proceeding by filing a written statement reflecting the agreement of the parties as to the correct inventors of the claimed invention in dispute. 35 U.S.C. 135(e) will provide that the Patent Trial and Appeal Board must take action consistent with the agreement, unless the Board finds the agreement to be inconsistent with the evidence of record. 35 U.S.C. 135(e) will further provide that the written settlement or understanding of the parties must be filed with the Director and, at the request of a party, will be treated as business confidential information, will be kept separate from the file of the involved patents or applications, and will be made available only to Government agencies on written request, or to any person on a showing of good cause.

New paragraph (f) of 35 U.S.C. 135 will allow the parties to a derivation proceeding to determine the contest, or

any aspect thereof, by arbitration within a time specified by the Director, and will provide that the arbitration is governed by the provisions of title 9, to the extent that title is not inconsistent with 35 U.S.C. 135. 35 U.S.C. 135(f) will also provide that the parties must give notice of any arbitration award to the Director, that the award is not enforceable until such notice is given, and that the award, as between the parties to the arbitration, is dispositive of the issues to which it relates but does not preclude the Director from determining the patentability of the claimed inventions involved in the proceeding. The Director will delegate to the Board authority to resolve patentability issues that arise during derivation proceedings when there is good cause to do so.

Discussion of Specific Rules

This notice proposes new rules to implement the provisions of the Leahy-Smith America Invents Act for instituting and conducting derivation proceedings before the Patent Trial and Appeal Board (Board). 35 U.S.C. 135(b), as amended, will provide that the Director will prescribe regulations setting forth standards for the conduct of derivation proceedings. This notice proposes to add a new subpart E to 37 CFR part 42 to provide rules specific to derivation proceedings.

Additionally, the Office in a separate rulemaking is proposing to add part 42, including subpart A, (RIN 0651–AC70) that would include a consolidated set of rules relating to Board trial practice. More specifically, the proposed subpart A of part 42 would set forth the policies, practices, and definitions common to all trial proceedings before the Board. The proposed rules in the instant notice and discussion below may reference the proposed rules in subpart A of part 42. Furthermore, the Office in separate rulemakings proposes to add a new subpart B to 37 CFR part 42 (RIN 0651–AC71) to provide rules specific to *inter partes* review, a new subpart C to 37 CFR part 42 (RIN 0651–AC72) to provide rules specific to post-grant review, and a new subpart D to 37 CFR part 42 (RIN 0651–AC73; RIN 0651–AC75) to provide rules specific to transitional program covered business method patents.

Title 37 of the Code of Federal Regulations, Chapter I, Part 42, Subpart E, entitled ''Derivation'' is proposed to be added as follows:

Section 42.400: Proposed § 42.400 would set forth policy considerations for derivation proceedings.

Proposed § 42.400(a) would provide that a derivation proceeding is a trial and subject to the rules set forth in subpart A.

Proposed § 42.400(b) would delegate to the Board the Director's authority to resolve patentability issues when there is good cause to do so. *See* the last sentence of 35 U.S.C. 135(f), as amended. For example, an issue of claim indefiniteness (35 U.S.C. 112) might need to be resolved before derivation can be substantively addressed on the merits. Resolution of such issues promotes procedural efficiency, and may even encourage party settlement, by providing clear guidance on the scope of the contested issues.

Section 42.401: Proposed § 42.401 would set forth definitions specific to derivation proceedings, in addition to definitions set forth in § 42.2 of this part.

Definitions proposed:

Agreement or *understanding under 35 U.S.C. 135(e):* The proposed definition would reflect the terminology used in 35 U.S.C. 135(e), as amended, to describe a settlement between parties to a derivation proceeding.

Applicant: The proposed definition would make it clear that reissue applicants are considered applicants, and not patentees, for purposes of a derivation proceeding.

Application: The proposed definition would make it clear that a reissue application is an application, not a patent, for purposes of a derivation proceeding. Specifically, the proposed definition includes both an application for an original patent and an application for a reissued patent.

Petitioner: The proposed definition of petitioner incorporates the statutory requirement (35 U.S.C. 135(a), as amended) that the petitioner be an applicant.

Respondent: The proposed definition of respondent identifies the respondent as the party other than the petitioner.

Section 42.402: Proposed § 42.402 would provide who may file a petition for a derivation proceeding.

Section 42.403: Proposed § 42.403 would provide that a petition for a derivation proceeding must be filed within one year after the first publication of a claim to an invention that is the same or substantially the same as the respondent's earlier application's claim to the invention. Such publication may be the publication by the USPTO of an application for patent or patent or by the World Intellectual Property Organization of an international application designating the United States. 35 U.S.C. 135(a), as amended, will provide that a petition for instituting a derivation proceeding may only be filed within the one-year period of the first publication to a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention. The proposed rule is consistent with 35 U.S.C. 135(a), as amended, because the earlier application's first publication of the allegedly derived invention triggers the one-year bar date. While the statute's use of the phrase ''a claim'' is ambiguous inasmuch as it could include the petitioner's claim as a trigger, such a broad construction could violate due process. For example, the petitioner could be barred by publication of its own claim before it had any knowledge of the respondent's application. Such problems may be avoided if the trigger for the deadline is publication of the respondent's claim.

Section 42.404: Proposed § 42.404 would provide that a fee must accompany the petition for a derivation proceeding and that no filing date will be accorded until payment is complete.

Section 42.405: Proposed § 42.405 would identify the content of a petition to institute a derivation proceeding. The proposed rule is consistent with 35 U.S.C. 135(b), as amended, which will allow the Director to prescribe regulations setting forth standards for the conduct of derivation proceedings, including requiring parties to provide sufficient evidence to prove and rebut a claim of derivation.

Proposed § 42.405(a) would require a petition to demonstrate that the petitioner has standing. To establish standing, a petitioner, at a minimum, must timely file a petition that demonstrates that the named inventor on the earlier filed application derived the claimed invention and filed the earlier application without authorization from the petitioner. This proposed requirement attempts to ensure that a party has standing to file the petition and would help prevent spuriously instituted derivation proceedings. This proposed rule also ensures that the petitioner has taken steps to obtain patent protection for the same or substantially same invention, thus promoting the useful arts. Facially improper standing would be a basis for denying the petition without proceeding to the merits of the decision.

Proposed § 42.405(b) would require that the petition identify the precise relief requested. The petition must provide sufficient information to identify the application or patent subject to a derivation proceeding. The petition must also demonstrate that the claimed invention in the subject application or patent was derived from

an inventor named in the petitioner's application and, without authorization, the earliest application claiming such invention was filed. The petitioner must further show why the claim is not patentably distinct from the invention disclosed to the respondent. For each of the respondent's targeted claims, the petitioner must likewise identify how the claim to the allegedly derived invention is to be construed. Where the claim to be construed contains a means-plus-function or step-plus-function limitation as permited under 35 U.S.C. 112, sixth paragraph, the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function. The proposed rule would provide an efficient means for identifying the legal and factual basis supporting a prima facie case of relief and would provide the opponent with a minimum level of notice as to the basis for the allegations of derivation.

Proposed § 42.405(c) would provide that a derivation showing is not sufficient unless it is supported by substantial evidence and at least one affidavit addressing communication and lack of authorization, consistent with 35 U.S.C. 135(a), as amended. The showing of communication must be corroborated.

Section 42.406: Proposed § 42.406 would provide requirements for the service of a petition in addition to the requirements set forth in § 42.6(e).

Proposed § 42.406(a) would require that the petitioner serve the respondent at the correspondence address of record. Petition may also attempt service at any other address known to the petitioner as likely to effect service. Once a patent has issued, communications between the Office and the patent owner often suffer. *Ray* v. *Lehman,* 55 F.3d 606 (Fed. Cir. 1995) (patentee's failure to maintain correspondence address contributed to failure to pay maintenance fee and therefore expiration of the patent). While the proposed rule requires service at the correspondence address of record, in many cases, the petitioner will already be in communication with the owner of the earlier application at a better service address than the official correspondence address.

Proposed § 42.406(b) would address the situation where delivery to an earlier application's correspondence address does not result in actual service. When the petitioner becomes aware of a service problem, it would be required to promptly advise the Board of the problem. The Board may authorize other forms of service, such as service by publication in the Official Gazette of the United States Patent and Trademark Office. *Cf.* 37 CFR 1.47(c) (notice by publication).

Section 42.407: Proposed § 42.407(a) would provide requirements for a complete petition. 35 U.S.C. 135(b), as amended, will provide that the Director establish regulations concerning the standards for the conduct of derivation proceedings. 35 U.S.C. 135(a), as amended, will provide that a derivation proceeding may be instituted where the Director determines that a petition demonstrates that the standards for instituting a derivation proceeding are met. Consistent with statute, the proposed rule would require that a complete petition be filed along with the fee and that it be served at the correspondence address of record for the earlier application.

Proposed § 42.407(b) would provide petitioners a one month time frame to correct defective requests to institute a derivation proceeding, unless the statutory deadline in which to file a petition for derivation has expired. In determining whether to grant a filing date, the Board would review the requests for procedural compliance. Where a procedural defect is noted, *e.g.,* failure to state the claims being challenged, the Board would notify the petitioner that the request was incomplete and identify any non-compliance issues.

Section 42.408: Proposed § 42.408 would provide that an administrative patent judge institutes and may reinstitute a derivation proceeding on behalf of the Director.

Section 42.409: Proposed § 42.409 would make it clear that an agreement or understanding filed under 35 U.S.C. 135(e) would be a settlement agreement for purposes of § 42.74.

Section 42.410: Proposed § 42.410 would provide for arbitration of derivation proceedings. Proposed § 42.410(a) will provide that parties to a derivation proceeding may determine such contest, or any aspect thereof, by arbitration, except that nothing shall preclude the Office from determining the patentability of the claimed inventions involved in the proceeding. The proposed rule is consistent with 35 U.S.C. 135(f) because it would permit arbitration but would not preclude the Office from independently determining issues of patentability during the course of the proceeding. Proposed § 42.410(b) provides that the Board will not set a time for, or otherwise modify the proceeding for, an arbitration unless the listed procedural requirements are met.

Section 42.411: Proposed § 42.411 would provide that an administrative patent judge may decline to institute or continue a derivation proceeding between an application and a patent or another application that are commonly owned. Common ownership in a derivation proceeding is a concern because it can lead to manipulation of the process. The proposed rule would be stated permissively because not all cases of overlapping ownership would be cause for concern. The cases of principal concern involve a real party in interest with the ability to control the conduct of more than one party.

Section 42.412: Proposed § 42.412 would provide for public availability of Board records.

Rulemaking Considerations

A. *Administrative Procedure Act (APA):* This notice proposes rules of practice concerning the procedure for requesting a derivation and the trial process after initiation of such a review. The changes being proposed in this notice do not change the substantive criteria of patentability. These proposed changes involve rules of agency practice and procedure and/or interpretive rules. *See Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (a rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these changes and the Initial Regulatory Flexibility Act analysis, below, for comment as it seeks the benefit of the public's views on the Office's proposed implementation of these provisions of the Leahy-Smith America Invents Act.

B. Regulatory Flexibility Act: The Office estimates that no more than 50 petitions for derivation will be filed in fiscal year 2013. This will be the first fiscal year in which derivation petitions will be available.

The Office has reviewed the percentage of applications and patents for which an interference was declared in fiscal year 2011. Applications and patents known to be owned by a small entity represent 19.62% of applications and patents for which interference was declared in FY 2011. Based on the assumption that the same percentage of applications and patents owned by small entities will be involved in a derivation proceeding, 20 small entity owned applications or patents would be affected by derivation review of the 100 parties to the 50 derivation proceedings.

1. Description of the Reasons That Action by the Office Is Being Considered: On September 16, 2011, the Leahy-Smith America Invents Act was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)). Section 3(i) of the Leahy-Smith America Invents Act amends 35 U.S.C. 135 to provide for derivation proceedings and eliminate the interference practice as to applications and patents that have an effective filing date on or after March 16, 2013 (with a few exceptions). 35 U.S.C. 135(b), as amended, will require that the Director prescribe regulations to set forth the standards for conducting derivation proceedings, including requiring parties to provide sufficient evidence to prove and rebut a claim of derivation.

2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rules: The proposed rules seek to implement derivation proceedings as authorized by the Leahy-Smith America Invents Act.

3. Description and Estimate of the Number of Affected Small Entities: The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the Regulatory Flexibility Act, and after consultation with the Small Business Administration, the Office formally adopted an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR 67109 (Nov. 20, 2006), 1313 *Off. Gaz. Pat. Office* 60 (Dec. 12, 2006). This alternate small business size standard is SBA's previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. *See* 13 CFR 121.802. If patent applicants identify themselves on a patent application as qualifying for reduced patent fees, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Unlike the SBA small business size standards set forth in 13 CFR 121.201, the size standard for USPTO is not industry-specific. The Office's definition of a small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 67112 (Nov 20, 2006), 1313 *Off. Gaz. Pat. Office* at 63 (Dec. 12, 2006).

As discussed above, it is anticipated that 50 petitions for derivation will be filed in fiscal year 2013. The Office has reviewed the percentage of applications and patents for which an interference was declared in fiscal year 2011. Applications and patents known to be owned by a small entity represent 19.62% of applications and patents for which interference was declared in FY 2011. Based on the assumption that the same percentage of applications and patents owned by small entities will be involved in a derivation proceeding, 20 small entity owned applications or patents would be affected by derivation proceeding.

The Office predicts that it will institute 10 derivation proceedings based on petitions seeking derivation filed in fiscal year 2013. This estimate is based on the low number of interference proceedings declared as well as the limited number of eligible applications.

During fiscal year 2011, the Office issued 21 decisions following a request for reconsideration of a decision on appeal in *inter partes* reexamination. The average time from original decision to decision on reconsideration was 4.4 months. Thus, the decisions on reconsideration were based on original decisions issued from July 2010 until June 2011. During this time period, the Office mailed 63 decisions on appeals in *inter partes* reexamination. See BPAI Statistics—Receipts and Dispositions by Technology Center, *http://www.uspto.gov/ip/boards/bpai/stats/receipts/index.jsp* (monthly data). Based on the assumption that the same rate of reconsideration (21 divided by 63 or 33.3%) will occur, the Office estimates that 2 requests for reconsideration will be filed. Based on the percentage of small entity owned patent applications or patents that were the subject of an interference declared in fiscal year 2010 (19.62%) it is estimated that 1 small entity will file a request for a reconsideration of a decision dismissing the petition for derivation in fiscal year 2013.

The Office reviewed motions, oppositions, and replies in a number of contested trial proceedings before the trial section of the Board. The review included determining whether the motion, opposition and reply were directed to patentability grounds and non-priority non-patentability grounds. Based on the review, it is anticipated that derivation proceedings will have an average of 23.4 motions, oppositions, and replies per trial after institution. Settlement is estimated to occur in 20% of instituted trials at various points of the trial. In the trials that are settled, it is estimated that only 50% of the noted motions, oppositions, and replies would be filed.

After a trial has been instituted but prior to a final written decision, parties to a derivation proceeding may request an oral hearing. It is anticipated that 5 requests for oral hearings will be filed. Based on the percentage of small entity owned patent applications or patents that were the subject of an interference declared in fiscal year 2010 (19.62%), it is estimated that 2 small entities will file a request for oral hearing derivation proceedings instituted in fiscal year 2013.

Parties to a review or derivation proceeding may file requests to treat a settlement as business confidential, request for adverse judgment, and arbitration agreements and awards. A written request to make a settlement agreement available may also be filed. Given the short time period set for conducting trials, it is anticipated that

the alternative dispute resolution options will be infrequently used. The Office estimates that 2 requests to treat a settlement as business confidential, 2 written requests to make a settlement agreement available, 2 requests for adverse judgment, default adverse judgment, or settlement notices and 2 arbitration agreements and awards will be filed. Based on the percentage of small entity owned patent applications or patents that were the subject of an interference declared in fiscal year 2010 (19.62%), it is estimated that 1 small entity will file a request to treat a settlement as business confidential, 1 small entity will file a request for adverse judgment, default adverse judgment notice, or settlement notice, and 1 small entity will file an arbitration agreement and award in the derivation proceedings instituted in fiscal year 2013.

Parties to a derivation proceeding may seek judicial review of the final decision of the Board. The Office projects that no more than 5 derivation proceedings filed in fiscal year 2013 will be appealed. Based on the percentage of small entity owned patent applications or patents that were the subject of an interference declared in fiscal year 2010 (19.62%), it is estimated that 2 small entities will seek judicial review of final decisions of the Board in the derivation proceedings instituted in fiscal year 2013.

4. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record: Based on the trends of declared contested cases in fiscal year 2011, it is anticipated that petitions for derivation will be filed across all technologies with approximately 16% being filed in electrical technologies, approximately 17% in mechanical technologies, and the remaining 67% in chemical technologies and design. A derivation petition is likely to be filed by an entity practicing in the same or similar field as the patent. Therefore, it is anticipated that 16% of the petitions for review will be filed in the electronic field, 17% in the mechanical field, and 67% in the chemical or design fields.

Preparation of the petition would require analyzing the patent claims, locating evidence supporting arguments of communication, and preparing the petition seeking review of the patent. The procedures for petitions to institute a derivation proceeding are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(4), 42.63, 42.65, and 42.402 through 42.406.

The skills necessary to prepare a petition seeking a derivation proceeding and to participate in a trial before the Patent Trial and Appeal Board would be similar to those needed to prepare a request for *inter partes* reexamination, and to represent a party in an *inter partes* reexamination before the Patent Trial and Appeal Board. The level of skill is typically possessed by a registered patent practitioner having devoted professional time to the particular practice area, typically under the supervision of a practitioner skilled in the particular practice area. Where authorized by the Board, a non-registered practitioner may be admitted *pro hac vice,* on a case-by-case basis based on the facts and circumstances of the trial and party, as well as the skill of the practitioner.

The cost of preparing a petition for *inter partes* review is anticipated to be same as the cost for preparing a request for *inter partes* reexamination. The American Intellectual Property Law Association's *AIPLA Report of the Economic Survey 2011* reported that the average cost of preparing a request for *inter partes* reexamination was $46,000. Based on the work required to file and prepare such request, the Office considers the reported cost as a reasonable estimate. Accordingly, the Office estimates that the cost of preparing a petition for *inter partes* review will be $46,000.

The cost of preparing a petition for post-grant or covered business method patent review is estimated to be 33.333% higher than the cost of preparing a petition for *inter partes* review because the petition for post-grant or covered business method patent review may seek to institute a proceeding on additional grounds such as subject matter eligibility. Therefore, the Office estimates that the cost of preparing a petition for post-grant or covered business method patent review would be $61,333. It is expected that petitions for derivation would have the same complexity and cost as a petition for post-grant review because derivation proceedings raise issues of communication, which have similar complexity to the issues that can be raised in a post-grant review, *i.e.,* public use and sale and written description. Thus, the Office estimates that the cost of preparing a petition for derivation would also be $61,333.

Following institution of a trial, the parties may be authorized to file various motions, *e.g.,* motions to amend and motions for additional discovery. Where a motion is authorized, an opposition may be authorized, and where an opposition is authorized, a reply may be authorized. The procedures for filing a motion are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(5), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, and 42.65. The procedures for filing an opposition are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, and 42.65. The procedures for filing a reply are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(c), 42.51, 42.52, 42.53, 42.54, 42.63, and 42.65. As discussed previously, the Office estimates that the average derivation proceeding is anticipated to have 23.4 motions, oppositions, and replies after institution.

The *AIPLA Report of the Economic Survey 2011* reported that the average cost in contested cases before the trial section of the Board prior to the priority phase was $322,000 per party. Because of the overlap of issues in patentability grounds, it is expected that the cost per motion will decline as more motions are filed in a proceeding. It is estimated that a motion, opposition, or reply in a derivation is estimated at $34,000, which is estimated by dividing the total public cost for all motions in current contested cases divided by the estimated number of motions in derivations under 35 U.S.C. 135, as amended. Based on the work required to file and prepare such briefs, the Office considers the reported cost as a reasonable estimate.

After a trial has been instituted but prior to a final written decision, parties to a review or derivation proceeding may request an oral hearing. The procedure for filing requests for oral argument is proposed in § 42.70. The *AIPLA Report of the Economic Survey 2011* reported that the third quartile cost of an *ex parte* appeal with an oral argument is $12,000, while the third quartile cost of an *ex parte* appeal without an oral argument is $6,000. In view of the reported costs, which the Office finds reasonable, and the increased complexity of an oral hearing with multiple parties, it is estimated that the cost per party for oral hearings would be $6,800 or $800 more than the reported third quartile cost for an *ex parte* oral hearing.

Parties to a derivation proceeding may file requests to treat a settlement as business confidential, request for adverse judgment, and arbitration agreements and awards. A written request to make a settlement agreement available may also be filed. The procedures to file requests that a settlement be treated as business confidential are proposed in §§ 42.74(c)

and 42.409. The procedures to file requests for adverse judgment are proposed in § 42.73(b). The procedures to file arbitration agreements and awards are proposed in § 42.410. The procedures to file requests to make a settlement agreement available are proposed in § 42.74(c)(2). It is anticipated that requests to treat a settlement as business confidential will require 2 hours of professional time or $680. It is anticipated that requests for adverse judgment will require 1 hour of professional time or $340. It is anticipated that arbitration agreements and awards will require 4 hours of professional time or $1,360. It is anticipated that requests to make a settlement agreement available will require 1 hour of professional time or $340. The requests to make a settlement agreement available will also require payment of a fee of $400 specified in proposed § 42.15(d). The fee proposed would be the same as currently set forth in § 41.20(a) for petitions to the Chief Administrative Patent Judge.

Parties to a review proceeding may seek judicial review of the judgment of the Board. The procedures to file notices of judicial review of a Board decision, including notices of appeal and notices of election provided for in 35 U.S.C. 141, 142, 145, and 146, are proposed in §§ 90.1 through 90.3. The submission of a copy of a notice of appeal or a notice of election is anticipated to require 6 minutes of professional time at a cost of $34.

5. Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Rules on Small Entities:

Size of petitions and motions: The Office considered whether to apply a page limit and what an appropriate page limit would be. The Office does not currently have a page limit on *inter partes* reexamination requests. The *inter partes* reexamination requests from October 1, 2010 to June 30, 2011, averaged 246 pages. Based on the experience of processing *inter partes* reexamination requests, the Office finds that the very large size of the requests has created a burden on the Office that hinders the efficiency and timeliness of processing the requests, and creates a burden on patent owners. The quarterly reported average processing time from the filing of a request to the publication of a reexamination certificate ranged from 28.9 months to 41.7 months in fiscal year 2009, from 29.5 months to 37.6 months in fiscal year 2010, and from 31.9 to 38.0 months in fiscal year 2011. *See* Reexaminations—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf*.

By contrast, the Office has a page limit on the motions filed in contested cases, except where parties are specificially authorized to exceed the limitation. The typical contested case proceeding is subject to a standing order that sets a 50 page limit for motions and oppositions on priority, a 15 page limit for miscellaneous motions (§ 41.121(a)(3)) and oppositions (§ 41.122), and a 25 page limit for other motions (§ 41.121(a)(2)) and oppositions to other motions. In typical proceedings, replies are subject to a 15 page limit if directed to priority, 5 page limit for miscellaneous issue, and 10 page limit for other motions. The average contested case was terminated in 10.1 months in fiscal year 2009, in 12 months in fiscal year 2010, and 9 months in fiscal year 2011. The percentage of contested cases terminated within 2 years was 93.7% in fiscal year 2009, 88.0% in fiscal year 2010, and 94.0% in fiscal year 2011. *See* BPAI Statistics—Performance Measures, *http://www.uspto.gov/ip/boards/bpai/stats/perform/index.jsp*.

Comparing the average time period for terminating a contested case, 10.0 to 12.0 months, with the average time period, during fiscal years 2009 through 2011, for completing an *inter partes* reexamination, 28.9 to 41.7 months, indicates that the average interference takes from 24% (10.0/41.7) to 42% (12.0/28.9) of the time of the average *inter partes* reexamination. While several factors contribute to the reduction in time, limiting the size of the requests and motions is considered a significant factor. Proposed § 42.24 would provide page limits for petitions, motions, oppositions, and replies.

Federal courts routinely use page limits in managing motions practice as ''[e]ffective writing is concise writing.'' *Spaziano* v. *Singletary,* 36 F.3d 1028, 1031 n.2 (11th Cir. 1994). Many district courts restrict the number of pages that may be filed in a motion including, for example, the District of Delaware, the District of New Jersey, the Eastern District of Texas, the Northern, Central, and Southern Districts of California, and the Eastern District of Virginia.

Federal courts have found that page limits ease the burden on both the parties and the courts, and patent cases are no exception. *Eolas Techs., Inc.* v. *Adobe Sys., Inc.,* No. 6:09–CV–446, at 1 (E.D. Tex. Sept. 2, 2010) (''The Local Rules' page limits ease the burden of motion practice on both the Court and the parties.''); *Blackboard, Inc.* v. *Desire2Learn, Inc.,* 521 F. Supp. 2d 575, 576 (E.D. Tex. 2007) (The parties ''seem to share the misconception, popular in some circles, that motion practice exists to require federal judges to shovel through steaming mounds of pleonastic arguments in Herculean effort to uncover a hidden gem of logic that will ineluctably compel a favorable ruling. Nothing could be farther from the truth.''); *Broadwater* v. *Heidtman Steel Prods., Inc.,* 182 F. Supp. 2d 705, 710 (S.D. Ill. 2002) (''Counsel are strongly advised, in the future, to not ask this Court for leave to file any memoranda (supporting or opposing dispositive motions) longer than 15 pages. The Court has handled complicated patent cases and employment discrimination cases in which the parties were able to limit their briefs supporting and opposing summary judgment to 10 or 15 pages.'' (Emphasis omitted)).

The Board's contested cases experience with page limits in motions practice is consistent with that of the federal courts. The Board's use of page limits has shown it to be beneficial without being unduly restrictive for the parties. Page limits have encouraged the parties to focus on dispositive issues, easing the burden of motions practice on the parties and on the Board.

The Board's contested cases experience with page limits is informed by its use of different approaches over the years. In the early 1990s, page limits were not routinely used for motions, and the practice suffered from lengthy and unacceptable delays. To reduce the burden on the parties and on the Board and thereby reduce the time to decision, the Board instituted page limits in the late 1990s for every motion. Page limit practice was found to be effective in reducing the burdens on the parties and improving decision times at the Board. In 2006, the Board revised the page limit practice and allowed unlimited findings of fact and generally limited the number of pages containing argument. Due to abuses of the system, the Board recently reverted back to page limits for the entire motion (both argument and findings of fact).

The Board's current page limits are consistent with the 25 page limits in the Northern, Central, and Southern Districts of California, and the Middle District of Florida and exceed the limits in the District of Delaware (20), the Northern District of Illinois (15), the District of Massachusetts (20), the Eastern District of Michigan (20), the Southern District of Florida (20), and the Southern District of Illinois (20).

In a typical proceeding before the Board, a party may be authorized to file a single motion for unpatentability based on prior art, a single motion for

unpatentability based upon failure to comply with 35 U.S.C. 112, lack of written description, and/or enablement, and potentially another motion for lack of compliance with 35 U.S.C. 101, although a 35 U.S.C. 101 motion may be required to be combined with the 35 U.S.C. 112 motion. Each of these motions is currently limited to 25 pages in length, unless good cause is shown that the page limits are unduly restrictive for a particular motion.

A petition requesting the institution of a trial proceeding would be similar to motions currently filed with the Board. Specifically, petitions to institute a trial seek a final written decision that the challenged claims are unpatentable, where derivation is a form of unpatentability. Accordingly, a petition to institute a trial based on prior art would, under current practice, be limited to 25 pages, and by consequence, a petition raising unpatentability based on prior art and unpatentability under 35 U.S.C. 101 and/or 112 would be limited to 50 pages.

Petitions to institute derivation proceedings, while distinct from interference practice, raise similar issues to those that may be raised in interferences in a motion for judgment on priority of invention. Currently, motions for judgment on priority of invention, including issues such as conception, corroboration, and diligence, are generally limited to 50 pages. Thus, the proposed 50 page limit is considered sufficient in all but exceptional cases.

The proposed rule would provide that petitions to institute a trial must comply with the stated page limits, but may be accompanied by a motion that seeks to waive the page limits. The petitioner must show in the motion how a waiver of the page limits is in the interests of justice. A copy of the desired non-page limited petition must accompany the motion. Generally, the Board would decide the motion prior to deciding whether to institute the trial.

Current Board practice provides a limit of 25 pages for other motions and 15 pages for miscellaneous motions. The Board's experience is that such page limits are sufficient for the parties filing them and do not unduly burden the opposing party or the Board. Petitions to institute a trial would generally replace the current practice of filing motions for unpatentability, as most motions for relief are expected to be similar to the current contested cases miscellaneous motion practice. Accordingly, the proposed 15 page limit is considered sufficient for most motions but may be adjusted where the limit is determined to be unduly restrictive for the relief requested.

Proposed § 42.24(b) would provide page limits for oppositions filed in response to motions. Current contested case practice provides an equal number of pages for an opposition as its corresponding motion. This is generally consistent with motions practice in federal courts. The proposed rule would continue the current practice.

Proposed § 42.24(c) would provide page limits for replies. Current contested case practice provides a 15 page limit for priority motion replies, a 5 page limit for miscellaneous (procedural) motion replies, and a 10 page limit for all other motions. The proposed rule is consistent with current contested case practice for procedural motions. The proposed rule would provide a 15 page limit for reply to petitions requesting a trial, which the Office believes is sufficient based on current practice. Current contested case practice has shown that such page limits do not unduly restrict the parties and, in fact, have provided sufficient flexibility to parties to not only reply to the motion but also help to focus on the issues. Thus, it is anticipated that default page limits would minimize the economic impact on small entities by focusing on the issues in the trials.

Discovery: The Office considered a procedure for discovery similar to the one available during district court litigation. Discovery of that scope has been criticized sharply particularly when attorneys use discovery tools as tactical weapons, which hinder the ''just, speedy, and inexpensive determination of every action and proceedings.'' *See* Introduction to *An E–Discovery Model Order available at http://www.cafc.uscourts.gov/images/stories/announcements/Ediscovery_Model_Order.pdf.* Accordingly, this alternative would have been inconsistent with objective of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the *inter partes,* post-grant and covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings. Prescribing the same standard for derivations allows for efficient proceedings using practices that are consistent as possible. It is envisioned that the public burden would be reduced by setting discover standards consistently across all trial proceedings at the Board.

Additional discovery increases trial costs and increases the expenditures of time by the parties and the Board. To promote effective discovery, the proposed rule would require a showing that the additional requested discovery is in the interests of justice, placing an affirmative burden upon a party seeking the discovery to show how the proposed discovery would be productive. The Board's experience in conducted contested cases, however, is that such showings are often lacking and authorization for additional discovery is expected to be rare.

The Office is proposing a default scheduling order to provide limited discovery as a matter of right and provide parties with the ability to seek additional discovery on a case-by-case basis. In weighing the need for additional discovery, should a request be made, the Board would consider the economic impact on the opposing party. This would tend to limit additional discovery where a party is a small entity.

Pro Hac Vice: The Office considered whether to allow counsel to appear *pro hac vice.* In certain cases, highly skilled, but non-registered attorneys have appeared satisfactorily before the Board in contested cases. The Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause. Proceedings before the Office can be technically complex. Consequently, the grant of a motion to appear *pro hac vice* is a discretionary action taking into account the specifics of the proceedings. Similarly, the revocation of *pro hac vice* is a discretionary action taking into account various factors, including incompetence, unwillingness to abide by the Office's Rules of Professional Conduct, prior findings of misconduct before the Office in other proceedings, and incivility.

The Board's past practice has required the filing of a motion by a registered patent practitioner seeking *pro hac vice* representation based upon a showing of: (1) How qualified the unregistered practitioner is to represent the party in the proceeding when measured against a registered practitioner, and, (2) whether the party has a genuine need to have the particular unregistered practitioner represent it during the proceeding. This practice has proven effective in the limited number of contested cases where such requests have been granted. The proposed rule, if adopted, would allow for this practice in the new proceedings authorized by the Leahy-Smith America Invents Act.

The proposed rules would provide a limited delegation to the Board under 35 U.S.C. 2(b)(2) and 32 to regulate the conduct of counsel in Board proceedings. The proposed rule would

delegate to the Board the authority to conduct counsel disqualification proceedings while the Board has jurisdiction over a proceeding. The rule would also delegate to the Chief Administrative Patent Judge the authority to make final a decision to disqualify counsel in a proceeding before the Board for the purposes of judicial review. This delegation would not derogate from the Director the prerogative to make such decisions, nor would it prevent the Chief Administrative Patent Judge from further delegating authority to an administrative patent judge.

The Office considered broadly permitting practitioners not registered to practice by the Office to represent parties in trial as well as categorically prohibiting such practice. A prohibition on the practice would be inconsistent with the Board's experience, and more importantly, might result in increased costs particularly where a small entity has selected its district court litigation team for representation before the Board, and has a patent review filed after litigation efforts have commenced. Alternatively, broadly making the practice available would create burdens on the Office in administering the trials and in completing the trial within the established timeframe, particularly if the selected practitioner does not have the requisite skill. In weighing the desirability of admitting a practitioner *pro hac vice,* the economic impact on the party in interest would be considered which would tend to increase the likelihood that a small entity could be represented by a non-registered practitioner. Accordingly, the alternatives to eliminate *pro hac vice* practice or to permit it more broadly would have been inconsistent with the efficient administration of the Office and the integrity of the patent system.

Default Electronic Filing: The Office considered a paper filing system and a mandatory electronic filing system (without any exceptions) as alternatives to the proposed requirement that all papers are to be electronically filed, unless otherwise authorized.

Based on the Office's experience, a paper based filing system increases delay in processing papers, delay in public availability, and the chance that a paper may be misplaced or made available to an improper party if confidential. Accordingly, the alternative of a paper based filing system would have been inconsistent with the efficient administration of the Office.

An electronic filing system (without any exceptions) that is rigidly applied would result in unnecessary cost and burdens, particularly where a party lacks the ability to file electronically. By contrast, if the proposed option is adopted, it is expected that the entity size and sophistication would be considered in determining whether alternative filing methods would be authorized.

6. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rules:

37 CFR 1.99 provides for the submission of information after publication of a patent application during examination by third parties.

37 CFR 1.171–1.179 provide for applications to reissue a patent to correct errors, including where a claim in a patent is overly broad.

37 CFR 1.291 provides for the protest against the issuance of a patent during examination.

37 CFR 1.321 provides for the disclaimer of a claim by a patentee.

37 CFR 1.501 and 1.502 provide for *ex parte* reexamination of patents. Under these rules, a person may submit to the Office prior art consisting of patents or printed publications that are pertinent to the patentability of any claim of a patent, and request reexamination of any claim in the patent on the basis of the cited prior art patents or printed publications. Consistent with 35 U.S.C. 302–307, *ex parte* reexamination rules provide a different threshold for initiation, require the proceeding to be conducted by an examiner with a right of appeal to the Patent Trial and Appeal Board, and allow for limited participation by third parties.

37 CFR 1.902–1.997 provide for *inter partes* reexamination of patents. Similar to *ex parte* reexamination, *inter partes* reexamination provides a procedure in which a third party may request reexamination of any claim in a patent on the basis of the cited prior art patents and printed publication. The *inter partes* reexamination practice will be eliminated, except for requests filed before the effective date of September 16, 2012. *See* § 6(c)(3)(C) of the Leahy-Smith America Invents Act.

Other countries have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)). Nevertheless, the Office believes that there are no other duplicative or overlapping foreign rules.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

Based on the petition and other filing requirements for initiating a derivation review proceeding, the USPTO estimates the burden of the proposed rules on the public to be $11,865,210 in fiscal year 2013, which represents the sum of the estimated total annual (hour) respondent cost burden ($11,844,410) plus the estimated total annual non-hour respondent cost burden ($20,800) provided in Part O, Section II, of this notice, *infra.*

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501–1571.

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321–4370h.

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this notice has been submitted to OMB under OMB control number 0651–00xx. In the Notice ''Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,'' RIN 0651–AC70, the information collection for all of the new trials authorized by the Leahy-Smith America Invents Act were provided. This notice also provides the subset of burden created by the derivation provisions. The proposed collection will be available at the OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

The USPTO is submitting the information collection to OMB for its review and approval because this notice of proposed rulemaking will add the following to a collection of information:

(1) Petitions to institute a derivation proceeding (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(4),42.63, 42.65, and 42.402 through 42.406);

(2) Motions (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(5), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, and 42.65);

(3) Oppositions (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, and 42.65); and

(4) Replies (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(c), 42.51, 42.52, 42.53, 42.54, 42.63, and 42.65).

The proposed rules also permit filing requests for oral argument (§ 42.70), requests for rehearing (§ 42.71(c)), requests for adverse judgment (§ 42.73(b)), requests that a settlement be treated as business confidential (§ 42.74(b) and 42.409), and arbitration agreements and awards (§ 42.410) to a collection of information.

I. Abstract: The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, issue applications as patents.

35 U.S.C. 135 in effect on March 16, 2013, will provide for petitions to institute a derivation proceeding at the USPTO for certain applications. The new rules for initiating and conducting these proceedings are proposed in this notice as a new subpart E of new part 42 of title 37 of the Code of Federal Regulations.

In estimating the number of hours necessary for preparing a petition to institute a derivation proceeding, the USPTO considered the estimated cost of preparing a request for *inter partes* reexamination ($46,000), the median billing rate ($340/hour), and the observation that the cost of *inter partes* reexamination has risen the fastest of all litigation costs since 2009 in the *AIPLA Report of the Economic Survey 2011.* It was estimated that a petition for an *inter partes* review and an *inter partes* reexamination request would cost the same to the preparing party ($46,000). The cost of preparing a petition for post-grant or covered business method patent review is estimated to be 33.333% higher than that cost of preparing an *inter partes* review petition because the petition for post-grant or covered business method patent review may seek to institute a proceeding on additional grounds such as subject matter eligibility. It is expected that petitions for derivation will have the same complexity and cost as a petition for post-grant review because derivation proceedings raise issues of communication, which have similar complexity to the public use and sale and written description issues that can be raised in a post-grant review. Thus, the Office estimates that the cost of preparing a petition for derivation will be $61,333.

In estimating the number of hours necessary for preparing motions after instituting and participating in the review, the USPTO considered the *AIPLA Report of the Economic Survey 2011* which reported the average cost of a party to a two-party interference to the end of the preliminary motion phase ($322,000) and inclusive of all costs ($631,000). The preliminary motion phase is a good proxy for patentability reviews since that is the period of current contested cases before the trial

section of the Board where most patentability motions are currently filed.

The USPTO also reviewed recent contested cases before the trial section of the Board to collect data on the average number of motions for any matter including priority, the subset of those motions directed to non-priority issues, the subset of those motions directed to non-priority patentability issues, and the subset of those motions directed to patentability issues based on a patent or printed publication on the basis of 35 U.S.C. 102 or 103. The review of current contested cases before the trial section of the Board indicated that approximately 15% of motions were directed to prior art grounds, 18% of motions were directed to other patentability grounds, 27% were directed to miscellaneous issues, and 40% were directed to priority issues. It was estimated that the cost per motion to a party in current contested cases before the trial section of the Board declines because of overlap in subject matter, expert overlap, and familiarity with the technical subject matter. Given the overlap of subject matter, a proceeding with fewer motions will have a somewhat less than proportional decrease in costs since the overlapping costs will be spread over fewer motions.

Derivations will be more like current contested cases before the trial section of the Board inasmuch as they may have a period which sets the stage for determining derivation and a derivation period. One half of derivations are anticipated to end in the preliminary motion period, while the other half are anticipated to proceed to decision on derivation. While it is recognized that fewer than half of all current contested cases before the trial section of the Board proceed to a priority decision, derivation contests are often more protracted than other current contested cases before the trial section of the Board. The costs associated with derivations through the preliminary motion period and through the derivation period should be comparable to the corresponding costs of current contested cases before the trial section of the Board.

The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burdens. Included in this estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the proposed changes in this notice of proposed rulemaking is to implement the changes to Office practice necessitated by § 3(i) of the Leahy-Smith America Invents Act.

The public uses this information collection to request review and derivation proceedings and to ensure that the associated fees and documentation are submitted to the USPTO.

II. Data

Needs and Uses: The information supplied to the USPTO by a petition to institute a derivation proceeding as well as the motions authorized following the institution is used by the USPTO to determine whether to initiate a derivation proceeding under 35 U.S.C. 135, as amended, and to prepare a final decision under 35 U.S.C. 135, as amended.

OMB Number: 0651–00xx.

Title: Patent Review and Derivation Proceedings.

Form Numbers: None.

Type of Review: New Collection.

Likely Respondents/Affected Public: Individuals or households, businesses or other for profit, not-for-profit institutions, farms, Federal Government, and state, local, or tribal governments.

Estimated Number of Respondents/Frequency of Collection: 100 respondents and 288 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public from 0.1 to 180.4 hours to gather the necessary information, prepare the documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 34,836.5 hours per year.

Estimated Total Annual (Hour) Respondent Cost Burden: $11,844,410 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of $340 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for this collection will be approximately $11,844,410 per year (34,836.5 hours per year multiplied by $340 per hour).

Estimated Total Annual Non-hour Respondent Cost Burden: $20,800 per year. There are no capital start-up or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees. There are filing fees associated with petitions for derivation proceedings and for requests to treat a settlement as business confidential. The total fees for this collection are calculated in the accompanying table. The USPTO estimates that the total fees associated with this collection will be approximately $20,800 per year.

Therefore, the total cost burden in fiscal year 2013 is estimated to be $11,865,210 (the sum of the estimated total annual (hour) respondent cost burden ($11,844,410) plus the estimated total annual non-hour respondent cost burden ($20,800)).

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Petition for derivation	180.4	50	9,020
Request for Reconsideration	80	5	400
Motions, replies and oppositions in derivation proceeding	120	210	25,200
Request for oral hearing	20	10	200
Request to treat a settlement as business confidential	2	2	4
Request for adverse judgment, default adverse judgment or settlement	1	2	2
Arbitration agreement and award	4	2	8
Request to make a settlement agreement available	1	2	2
Notice of judicial review of a Board decision (*e.g.,* notice of appeal under 35 U.S.C. 142)	0.1	5	.5
Totals		288	34,836.5

Item	Estimated annual responses	Fee amount	Estimated annual filing costs
Petition for derivation	50	$400	$20,000
Request for Reconsideration	5	0	0
Motions, replies and oppositions in derivation proceeding	210	0	0
Request for oral hearing	10	0	0
Request to treat a settlement as business confidential	2	0	0
Request for adverse judgment, default adverse judgment or settlement	2	0	0
Arbitration agreement and awards	2	0	0
Request to make a settlement agreement available	2	400	800
Notice of judicial review of a Board decision (*e.g.,* notice of appeal under 35 U.S.C. 142)	5	0	0
Totals	288		20,800

III. Solicitation

The agency is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Interested persons are requested to send comments regarding this information collection by April 10, 2012, to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Nicholas A. Fraser, the Desk Officer for the United States Patent and Trademark Office, and via email at *nfraser@omb.eop.gov;* and (2) The Board of Patent Appeals and Interferences by electronic mail message over the Internet addressed to *derivation@uspto.gov,* or by mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Judge Michael Tierney, Derivation Proposed Rules.''

Notwithstanding any other provision of law, no person is 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 currently valid OMB control number.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

Proposed Amendments to the Regulatory Text

For the reasons stated in the preamble, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office propose to amend 37 CFR part 42 as proposed to be added in the February 9, 2012, issue of the **Federal Register** as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

1. The authority citation for 37 CFR part 42 continues to read as follows:

Authority: 35 U.S.C. (2)(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326 and Leahy-Smith America Invents Act, Pub. L. 112–29, sections 6(c), 6(f) and 18, 125 Stat. 284, 304, 311, and 329 (2011).

2. A new subpart E is added to read as follows:

Subpart E—Derivation

General

Sec.
42.400 Procedure; pendency.
42.401 Definitions.
42.402 Who may file a petition for a derivation proceeding.
42.403 Time for filing.
42.404 Derivation fee.
42.405 Content of petition.
42.406 Service of petition.
42.407 Filing date.

Instituting Derivation Proceeding

42.408 Institution of derivation proceeding.

After Institution of Derivation Proceeding

42.409 Settlement agreements.
42.410 Arbitration.
42.411 Common interests in the invention.
42.412 Public availability of Board records.

Subpart E—Derivation

General

§ 42.400 Procedure; pendency

(a) A derivation proceeding is a trial subject to the procedures set forth in subpart A of this part.

(b) The Board may for good cause authorize or direct the parties to address patentability issues that arise in the course of the derivation proceeding.

§ 42.401 Definitions.

In addition to the definitions in § 42.2, the following additional definitions apply to proceedings under this subpart:

Agreement or *understanding under 35 U.S.C. 135(e)* means settlement for the purposes of § 42.74.

Applicant includes a reissue applicant.

Application includes both an application for an original patent and an application for a reissued patent.

Petitioner means a patent applicant who petitions for a determination that another party named in an earlier-filed patent application allegedly derived a claimed invention from an inventor named in the petitioner's application and filed the earlier application without authorization.

Respondent means a party other than the petitioner.

§ 42.402 Who may file a petition for a derivation proceeding.

An applicant for patent may file a petition to institute a derivation proceeding in the Office.

§ 42.403 Time for filing.

A petition for a derivation proceeding must be filed within one year after the first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the allegedly derived invention.

§ 42.404 Derivation fee.

(a) A derivation fee set forth in § 42.15(c) must accompany the petition.

(b) No filing date will be accorded to the petition until payment is complete.

§ 42.405 Content of petition.

(a) *Grounds for standing.* The petition must:

(1) Demonstrate compliance with §§ 42.402 and 42.403; and

(2) Show that the petitioner has at least one claim that is:

(i) The same or substantially the same as the respondent's claimed invention; and

(ii) Not patentably distinct from the invention disclosed to the respondent.

(b) In addition to the requirements of §§ 42.8 and 42.22, the petition must:

(1) Provide sufficient information to identify the application or patent for which the petitioner seeks a derivation proceeding;

(2) Demonstrate that an invention was derived from an inventor named in the petitioner's application and, without authorization, the earliest application claiming such invention was filed; and

(3) For each of the respondent's claims to the derived invention,

(i) Show why the claimed invention is not patentably distinct from the invention disclosed to the respondent, and

(ii) Identify how the claim is to be construed. Where the claim to be construed contains a means-plus-function or step-plus-function limitation as permited under 35 U.S.C. 112, sixth paragraph, the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function.

(c) *Sufficiency of showing.* A derivation showing is not sufficient unless it is supported by substantial evidence, including at least one affidavit addressing communication of the derived invention and lack of authorization that, if unrebutted, would support a determination of derivation. The showing of communication must be corroborated.

§ 42.406 Service of petition.

In addition to the requirements of § 42.6, the petitioner must serve the petition and exhibits relied upon in the petition as follows:

(a) The petition and supporting evidence must be served at the correspondence address of record for the earlier application. The petitioner may additionally serve the petition and supporting evidence on the respondent at any other address known to the petitioner as likely to effect service.

(b) If the petitioner cannot effect service of the petition and supporting evidence at the correspondence address of record for the subject application or patent, the petitioner must immediately contact the Board to discuss alternate modes of service.

§ 42.407 Filing date.

(a) *Complete petition.* A petition to institute a derivation proceeding will not be accorded a filing date until the petition satisfies all of the following requirements:

(1) Complies with § 42.405,

(2) Service of the petition on the correspondence address of record as provided in § 42.406, and

(3) Is accompanied by the fee to institute required in § 42.15(c).

(b) *Incomplete request.* Where the petitioner files an incomplete request, no filing date will be accorded, and the Office will dismiss the request if the deficiency in the request is not corrected within the earlier of either one month from notice of the incomplete request, or the expiration of the statutory deadline in which to file a petition for derivation.

Instituting Derivation Proceeding

§ 42.408 Institution of derivation proceeding.

(a) An administrative patent judge institutes, and may as necessary reinstitute, the derivation proceeding on behalf of the Director.

(b) *Additional derivation proceeding.* The petitioner may suggest the addition of a patent or application to the derivation proceeding. The suggestion should make the showings required under § 42.405 of this part and explain why the suggestion could not have been made in the original petition.

After Institution of Derivation Proceeding

§ 42.409 Settlement agreements.

An agreement or understanding under 35 U.S.C. 135(e) is a settlement for the purposes of § 42.74.

§ 42.410 Arbitration.

(a) Parties may resort to binding arbitration to determine any issue. The Office is not a party to the arbitration. The Board is not bound by, and may independently determine, any question of patentability.

(b) The Board will not set a time for, or otherwise modify the proceeding for, an arbitration unless:

(1) It is to be conducted according to Title 9 of the United States Code;

(2) The parties notify the Board in writing of their intention to arbitrate;

(3) The agreement to arbitrate:

(i) Is in writing;

(ii) Specifies the issues to be arbitrated;

(iii) Names the arbitrator, or provides a date not more than 30 days after the execution of the agreement for the selection of the arbitrator;

(iv) Provides that the arbitrator's award shall be binding on the parties and that judgment thereon can be entered by the Board;

(v) Provides that a copy of the agreement is filed within 20 days after its execution; and

(vi) provides that the arbitration is completed within the time the Board sets.

(c) The parties are solely responsible for the selection of the arbitrator and the conduct of the arbitration.

(d) The Board may determine issues the arbitration does not resolve.

(e) The Board will not consider the arbitration award unless it:

(1) Is binding on the parties;

(2) Is in writing;

(3) States in a clear and definite manner each issue arbitrated and the disposition of each issue; and

(4) Is filed within 20 days of the date of the award.

(f) Once the award is filed, the parties to the award may not take actions inconsistent with the award. If the award is dispositive of the contested subject matter for a party, the Board may enter judgment as to that party.

§ 42.411 Common interests in the invention.

The Board may decline to institute, or if already instituted the Board may issue judgment in, a derivation proceeding between an application and a patent or another application that are commonly owned.

§ 42.412 Public availability of Board records

(a) *Publication*–(1) *Generally.* Any Board decision is available for public inspection without a party's permission if rendered in a file open to the public pursuant to § 1.11 of this chapter or in an application that has been published in accordance with §§ 1.211 to 1.221 of this chapter. The Office may independently publish any Board decision that is available for public inspection.

(2) *Determination of special circumstances.* Any Board decision not publishable under paragraph (a)(1) of this section may be published or made available for public inspection if the Director believes that special circumstances warrant publication and a party does not petition within two months after being notified of the

intention to make the decision public, objecting in writing on the ground that the decision discloses the objecting party's trade secret or other confidential information and stating with specificity that such information is not otherwise publicly available.

(b) *Record of proceeding.* (1) The record of a Board proceeding is available to the public, unless a patent application not otherwise available to the public is involved.

(2) Notwithstanding paragraph (b)(1) of this section, after a final Board decision in or judgment in a Board proceeding, the record of the Board proceeding will be made available to the public if any involved file is or becomes open to the public under § 1.11 of this title or an involved application is or becomes published under §§ 1.211 to 1.221 of this chapter.

Dated: January 31, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–2535 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2011–0083]

RIN 0651–AC71

Changes to Implement Inter Partes Review Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes new rules to implement the provisions of the Leahy-Smith America Invents Act that create a new *inter partes* review proceeding to be conducted before the Patent Trial and Appeal Board (Board). These provisions of the Leahy-Smith America Invents Act will take effect on September 16, 2012, one year after the date of enactment, and apply to any patent issued before, on, or after the effective date.

DATES: The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before April 10, 2012 to ensure consideration.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *inter_partes_review@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Judge Michael Tierney, *Inter partes* Review Proposed Rules.''

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. *See* the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Board of Patent Appeals and Interferences, currently located in Madison East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Michael Tierney, Lead Administrative Patent Judge, Scott Boalick, Lead Administrative Patent Judge, Robert Clarke, Administrative Patent Judge, and Lynn Kryza, Senior Administrator, Board of Patent Appeals and Interferences, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION: On September 16, 2011, the Leahy-Smith America Invents Act was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)). The purpose of the Leahy-Smith America Invents Act and these proposed regulations is to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs. The preamble of this notice sets forth in detail the procedures by which the Board will conduct *inter partes* review proceedings. The USPTO is engaged in a transparent process to create a timely, cost-effective alternative to litigation. Moreover, the rulemaking process is designed to ensure the integrity of the trial procedures. *See* 35 U.S.C. 316(b), as amended. The proposed rules would provide a set of rules relating to Board trial practice for *inter partes* review.

Section 6 of the Leahy-Smith America Invents Act is entitled ''POST–GRANT REVIEW PROCEEDINGS'' (Pub. L. 112–29, 125 Stat. 284, 299–305 (2011)). Section 6(a) of the Leahy-Smith America Invents Act, entitled ''INTER PARTES REVIEW,'' amends chapter 31 of title 35, United States Code, also entitled ''INTER PARTES REVIEW.'' In particular, section 6(a) of the Leahy-Smith America Invents Act amends 35 U.S.C. 311–318 and adds 35 U.S.C. 319.

Section 6(a) of the Leahy-Smith America Invents Act amends 35 U.S.C. 311, entitled ''Inter partes review.'' 35 U.S.C. 311(a), as amended, will provide that, subject to the provisions of chapter 31 of title 35, United States Code, a person who is not the owner of a patent may file a petition with the Office to institute an *inter partes* review of the patent. 35 U.S.C. 311(a), as amended, will also provide that the Director will establish, by regulation, fees to be paid by the person requesting the review, in such amounts as the Director determines to be reasonable, considering the aggregate costs of the review. 35 U.S.C. 311(b), as amended, will provide that a petitioner in an *inter partes* review may request to cancel as unpatentable one or more claims of a patent only on a ground that could be raised under 35 U.S.C. 102 or 103 and only on the basis of prior art consisting of patents or printed publications. 35 U.S.C. 311(c), as amended, will provide that a petition for *inter partes* review may be filed after the later of either: (1) the date that is nine months after the grant of a patent or issuance of a reissue of a patent; or (2) if a post-grant review is instituted under chapter 32 of title 35, United States Code, the date of the termination of that post-grant review.

The grounds for seeking an *inter partes* review will be limited compared with post-grant review. The grounds for seeking *inter partes* review are limited to issues raised under 35 U.S.C. 102 or 103 and only on the basis of prior art consisting of patents or printed publications. In contrast, the grounds for seeking post-grant review include any ground that could be raised under 35 U.S.C. 282(b)(2) or (3). Such grounds for post-grant review include grounds that could be raised under 35 U.S.C. 102 or 103 including those based on prior

art consisting of patents or printed publications. Other grounds available for post-grant review include 35 U.S.C. 101 and 112, with the exception of compliance with the best mode requirement.

Section 6(a) of the Leahy-Smith America Invents Act amends 35 U.S.C. 312, entitled ''Petitions.'' 35 U.S.C. 312(a), as amended, will provide that a petition filed under 35 U.S.C. 311, as amended, may be considered only if certain conditions are met. First, the petition must be accompanied by payment of the fee established by the Director under 35 U.S.C. 311, as amended. Second, the petition must identify all real parties in interest. Third, the petition must identify, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim, including: (A) Copies of patents and printed publications that the petitioner relies upon in support of the petition and (B) affidavits or declarations of supporting evidence and opinions, if the petitioner relies on expert opinions. Fourth, the petition must provide such other information as the Director may require by regulation. Fifth, the petitioner must provide copies of any of the documents required under paragraphs (2), (3), and (4) of 35 U.S.C. 312(a) to the patent owner or, if applicable, the designated representative of the patent owner. 35 U.S.C. 312(b), as amended, will provide that, as soon as practicable after the receipt of a petition under 35 U.S.C. 311, as amended, the Director will make the petition available to the public.

Section 6(a) of the Leahy-Smith America Invents Act amends 35 U.S.C. 313, entitled ''Preliminary response to petition.'' 35 U.S.C. 313, as amended, will provide that, if an *inter partes* review petition is filed under 35 U.S.C. 311, as amended, within a time period set by the Director, the patent owner has the right to file a preliminary response to the petition that sets forth reasons why no *inter partes* review should be instituted based upon the failure of the petition to meet any requirement of chapter 31 of title 35, United States Code.

Section 6(a) of the Leahy-Smith America Invents Act amends 35 U.S.C. 314, entitled ''Institution of inter partes review.'' 35 U.S.C. 314(a), as amended, will provide that the Director may not authorize an *inter partes* review to be instituted, unless the Director determines that the information presented in the petition filed under 35 U.S.C. 311 and any response filed under 35 U.S.C. 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least one of the claims challenged in the petition. 35 U.S.C. 314(b), as amended, will provide that the Director will determine whether to institute an *inter partes* review under chapter 31 of title 35, United States Code, pursuant to a petition filed under 35 U.S.C. 311, as amended, within three months after: (1) Receiving a preliminary response to the petition under 35 U.S.C. 313, as amended; or (2) if no such preliminary response is filed, the last date on which such response may be filed. 35 U.S.C. 314(c), as amended, will provide that the Director will notify the petitioner and patent owner, in writing, of the Director's determination under 35 U.S.C. 314(a), and will make the notice available to the public as soon as is practicable. 35 U.S.C. 314(c), as amended, will also provide that the notice will include the date on which the review will commence. 35 U.S.C. 314(d), as amended, will provide that the determination by the Director whether to institute an *inter partes* review under 35 U.S.C. 314 will be final and nonappealable.

Section 6(a) of the Leahy-Smith America Invents Act amends 35 U.S.C. 315, entitled ''Relation to other proceedings or actions.'' 35 U.S.C. 315(a)(1), as amended, will provide that an *inter partes* review may not be instituted if, before the date on which the petition for review is filed, the petitioner or real party in interest filed a civil action challenging the validity of a claim of the patent. 35 U.S.C. 315(a)(2), as amended, will provide for an automatic stay of a civil action brought by the petitioner or real party in interest challenging the validity of a claim of the patent and filed on or after the date on which the petition for *inter partes* review was filed, until certain specified conditions are met. 35 U.S.C. 315(a)(3), as amended, will provide that a counterclaim challenging the validity of a claim of a patent does not constitute a civil action challenging the validity of a claim of a patent for purposes of 35 U.S.C. 315(a), as amended.

35 U.S.C. 315(b), as amended, will provide that an *inter partes* review may not be instituted if the petition requesting the proceeding is filed more than one year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent. However, the time limitation set forth in 35 U.S.C. 315(b), as amended, will not apply to a request for joinder under 35 U.S.C. 315(c), as amended.

35 U.S.C. 315(c), as amended, will provide that if the Director institutes an *inter partes* review, the Director may, in the Director's discretion, join as a party to that *inter partes* review any person who properly files a petition under 35 U.S.C. 311 that the Director, after receiving a preliminary response under 35 U.S.C. 313 or the expiration of the time for filing such a response, determines warrants the institution of an *inter partes* review under 35 U.S.C. 314.

35 U.S.C. 315(d), as amended, will provide that, notwithstanding 35 U.S.C. 135(a), as amended, 251, and 252, and chapter 30 of title 35, United States Code, during the pendency of an *inter partes* review, if another proceeding or matter involving the patent is before the Office, the Director may determine the manner in which the *inter partes* review or other proceeding or matter may proceed, including providing for stay, transfer, consolidation, or termination of any such matter or proceeding.

35 U.S.C. 315(e)(1), as amended, will provide that the petitioner in an *inter partes* review of a claim in a patent under chapter 31 of title 35, United States Code, that results in a final written decision under 35 U.S.C. 318(a), or the real party in interest or privy of the petitioner, may not request or maintain a proceeding before the Office with respect to that claim on any ground that the petitioner raised or reasonably could have raised during that *inter partes* review. 35 U.S.C. 315(e)(2), as amended, will provide for estoppel against an *inter partes* review petitioner, or the real party in interest or privy of the petitioner, in certain civil actions and certain other proceedings before the International Trade Commission if that *inter partes* review results in a final written decision under 35 U.S.C. 318(a).

Section 6(a) of the Leahy-Smith America Invents Act amends 35 U.S.C. 316, entitled ''Conduct of inter partes review.'' 35 U.S.C. 316(a), as amended, will provide that the Director will prescribe regulations: (1) Providing that the file of any proceeding under chapter 31 of title 35, United States Code, will be made available to the public, except that any petition or document filed with the intent that it be sealed will, if accompanied by a motion to seal, be treated as sealed pending the outcome of the ruling on the motion; (2) setting forth the standards for the showing of sufficient grounds to institute a review under 35 U.S.C. 314(a); (3) establishing procedures for the submission of supplemental information after the petition is filed; (4) establishing and governing *inter partes* review under chapter 31 of title 35, United States

Code, and the relationship of such review to other proceedings under title 35, United States Code; (5) setting forth standards and procedures for discovery of relevant evidence, including that such discovery will be limited to: (A) The deposition of witnesses submitting affidavits or declarations, and (B) what is otherwise necessary in the interest of justice; (6) prescribing sanctions for abuse of discovery, abuse of process, or any other improper use of the proceeding, such as to harass or to cause unnecessary delay or an unnecessary increase in the cost of the proceeding; (7) providing for protective orders governing the exchange and submission of confidential information; (8) providing for the filing by the patent owner of a response to the petition under 35 U.S.C. 313, as amended, after an *inter partes* review has been instituted, and require that the patent owner file with such response, through affidavits or declarations, any additional factual evidence and expert opinions on which the patent owner relies in support of the response; (9) setting forth standards and procedures for allowing the patent owner to move to amend the patent under 35 U.S.C. 316(d), as amended, to cancel a challenged claim or propose a reasonable number of substitute claims, and ensure that any information submitted by the patent owner in support of any amendment entered under 35 U.S.C. 316(d), as amended, is made available to the public as part of the prosecution history of the patent; (10) providing either party with the right to an oral hearing as part of the proceeding; (11) requiring that the final determination in an *inter partes* review will be issued not later than one year after the date on which the Director notices the institution of a review under chapter 31 of title 35, United States Code, except that the Director may, for good cause shown, extend the one-year period by not more than six months, and may adjust the time periods in this paragraph in the case of joinder under 35 U.S.C. 315(c), as amended; (12) setting a time period for requesting joinder under 35 U.S.C. 315(c), as amended; and (13) providing the petitioner with at least one opportunity to file written comments within a time period established by the Director.

35 U.S.C. 316(b), as amended, will provide that in prescribing regulations under 35 U.S.C. 316, the Director will consider the effect of any such regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely proceedings instituted under chapter 31 of title 35, United States Code.

35 U.S.C. 316(c), as amended, will provide that the Patent Trial and Appeal Board will, in accordance with 35 U.S.C. 6, conduct each *inter partes* review instituted under chapter 31 of title 35, United States Code.

35 U.S.C. 316(d)(1), as amended, will provide that during an *inter partes* review instituted under chapter 31 of title 35, United States Code, the patent owner may file one motion to amend the patent in one or more of the following ways: (A) Cancel any challenged patent claim; and (B) for each challenged claim, propose a reasonable number of substitute claims. 35 U.S.C. 316(d)(2), as amended, provides that additional motions to amend may be permitted upon the joint request of the petitioner and the patent owner to materially advance the settlement of a proceeding under 35 U.S.C. 317, as amended, or as permitted by regulations prescribed by the Director. 35 U.S.C. 316(d)(3), as amended, will provide that an amendment under 35 U.S.C. 316(d) may not enlarge the scope of the claims of the patent or introduce new matter.

35 U.S.C. 316(e), as amended, will provide that in an *inter partes* review instituted under chapter 31 of title 35, United States Code, the petitioner has the burden of proving a proposition of unpatentability by a preponderance of the evidence.

Section 6(a) of the Leahy-Smith America Invents Act amends 35 U.S.C. 317, entitled ''Settlement.'' 35 U.S.C. 317(a), as amended, will provide that an *inter partes* review instituted under chapter 31 of title 35, United States Code, will be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed. 35 U.S.C. 317(a), as amended, will also provide that if the *inter partes* review is terminated with respect to a petitioner under 35 U.S.C. 317, no estoppel under 35 U.S.C. 315(e), as amended, will attach to the petitioner, or to the real party in interest or privy of the petitioner, on the basis of that petitioner's institution of that *inter partes* review. 35 U.S.C. 317(a), as amended, will further provide that if no petitioner remains in the *inter partes* review, the Office may terminate the review or proceed to a final written decision under 35 U.S.C. 318(a).

35 U.S.C. 317(b), as amended, will provide that any agreement or understanding between the patent owner and a petitioner, including any collateral agreements referred to in the agreement or understanding, made in connection with, or in contemplation of, the termination of an *inter partes* review under 35 U.S.C. 317 will be in writing and a true copy of such agreement or understanding will be filed in the Office before the termination of the *inter partes* review as between the parties. 35 U.S.C. 317(b), as amended, will also provide that at the request of a party to the proceeding, the agreement or understanding will be treated as business confidential information, will be kept separate from the file of the involved patents, and will be made available only to Federal Government agencies on written request, or to any person on a showing of good cause.

Section 6(a) of the Leahy-Smith America Invents Act amends 35 U.S.C. 318, entitled ''Decision of the Board.'' 35 U.S.C. 318(a), as amended, will provide that if an *inter partes* review is instituted and not dismissed under chapter 31 of title 35, United States Code, the Patent Trial and Appeal Board will issue a final written decision with respect to the patentability of any patent claim challenged by the petitioner and any new claim added under 35 U.S.C. 316(d). 35 U.S.C. 318(b), as amended, will provide that if the Patent Trial and Appeal Board issues a final written decision under 35 U.S.C. 318(a) and the time for appeal has expired or any appeal has terminated, the Director will issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable, confirming any claim of the patent determined to be patentable, and incorporating in the patent by operation of the certificate any new or amended claim determined to be patentable. 35 U.S.C. 318(c), as amended, will provide that any proposed amended or new claim determined to be patentable and incorporated into a patent following an *inter partes* review under chapter 31 of title 35, United States Code, will have the same effect as that specified in 35 U.S.C. 252 for reissued patents on the right of any person who made, purchased, or used within the United States, or imported into the United States, anything patented by such proposed amended or new claim, or who made substantial preparation therefor, before the issuance of a certificate under 35 U.S.C. 318(b). 35 U.S.C. 318(d), as amended, will provide that the Office will make available to the public data describing the length of time between the institution of, and the issuance of a final written decision under 35 U.S.C. 318(a), for each *inter partes* review.

Section 6(a) of the Leahy-Smith America Invents Act adds 35 U.S.C. 319, entitled ''Appeal.'' 35 U.S.C. 319 will

provide that a party dissatisfied with the final written decision of the Patent Trial and Appeal Board under 35 U.S.C. 318(a), as amended, may appeal the decision pursuant to 35 U.S.C. 141–144. 35 U.S.C. 319 will also provide that any party to the *inter partes* review will have the right to be a party to the appeal.

Section 6(c) of the Leahy-Smith America Invents Act is entitled ''REGULATIONS AND EFFECTIVE DATE.'' Section 6(c)(1) of the Leahy-Smith America Invents Act provides that the Director will, not later than the date that is one year after the date of the enactment of the Leahy-Smith America Invents Act, issue regulations to carry out chapter 31 of title 35, United States Code, as amended by section 6(a) of the Leahy-Smith America Invents Act.

Section 6(c)(2)(A) of the Leahy-Smith America Invents Act provides that the amendments made by section 6(a) of the Leahy-Smith America Invents Act will take effect upon the expiration of the one-year period beginning on the date of the enactment of the Leahy-Smith America Invents Act, and will apply to any patent issued before, on, or after that effective date.

Section 6(c)(2)(B) of the Leahy-Smith America Invents Act provides that the Director may impose a limit on the number of *inter partes* reviews that may be instituted under chapter 31 of title 35, United States Code, during each of the first four one-year periods in which the amendments made by section 6(a) of the Leahy-Smith America Invents Act are in effect, if such number in each year equals or exceeds the number of *inter partes* reexaminations that are ordered under chapter 31 of title 35, United States Code, in the last fiscal year ending before the effective date of the amendments made by section 6(a) of the Leahy-Smith America Invents Act.

Section 6(c)(3) Leahy-Smith America Invents Act provides a transition provision for the granting, conduct, and termination of *inter partes* reexaminations on or after the effective date of the Leahy-Smith America Invents Act. The Office in a separate rulemaking revised the rules governing *inter partes* reexamination to implement the transition provision that changes the standard for granting a request for *inter partes* reexamination, and to reflect the termination of *inter partes* reexamination effective September 16, 2012. *See Revision of Standard for Granting an Inter partes Reexamination Request,* 76 FR 59055 (Sept. 23, 2011) (final rule).

Discussion of Specific Rules

This notice proposes new rules to implement the provisions of the Leahy-Smith America Invents Act for instituting and conducting *inter partes* review proceedings before the Patent Trial and Appeal Board (Board). As previously discussed, 35 U.S.C. 316(a)(4), as amended by the Leahy-Smith America Invents Act, provides that the Director will prescribe regulations establishing and governing *inter partes* review and the relationship of the review to other proceedings under title 35 of the United States Code. In particular, this notice proposes to add a new subpart B to 37 CFR part 42 to provide rules specific to *inter partes* review.

Additionally, the Office in a separate rulemaking is proposing to add part 42, (RIN 0651–AC70) including subpart A, that would include a consolidated set of rules relating to Board trial practice. More specifically, the proposed subpart A of part 42 would set forth the policies, practices, and definitions common to all trial proceedings before the Board. The proposed rules in the instant notice and discussion below may reference the proposed rules in subpart A of part 42. Furthermore, the Office in separate rulemakings is proposing to add a new subpart C to 37 CFR part 42 (RIN 0651–AC72) to provide rules specific to post-grant review, a new subpart D to 37 CFR part 42 (RIN 0651–AC73; RIN 0651–AC75) to provide rules specific to the transitional program for covered business method patents, and a new subpart E to 37 CFR part 42 (RIN 0651–AC74) to provide rules specific to derivation.

Title 37 of the Code of Federal Regulations, Chapter I, Part 42, Subpart B, entitled ''*Inter partes* Review'' is proposed to be added as follows:

Section 42.100: Proposed § 42.100 would set forth policy considerations for *inter partes* review proceedings.

Proposed § 42.100(a) would provide that an *inter partes* review is a trial and subject to the rules set forth in subpart A of title 42, Code of Federal Regulations.

Proposed § 42.100(b) would provide that a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification in which it appears. This proposed rule would be consistent with longstanding established principles of claim construction before the Office. *In re Am. Acad. of Sci. Tech Ctr.,* 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Yamamoto,* 740 F.2d 1569, 1571 (Fed. Cir. 1984). As explained in *Yamamoto,* a party's ability to amend claims to avoid prior art distinguishes Office proceedings from district court proceedings and justifies the difficult standard for claim interpretation. *Yamamoto,* 740 F.2d at 1572.

Proposed § 42.100(c) would provide a one-year time frame for administering the proceeding after institution, with up to a six-month extension for good cause. This proposed rule is consistent with 35 U.S.C. 316(a)(11), as amended, which sets forth statutory time frames for *inter partes* review.

Section 42.101: Proposed § 42.101 would provide who may file a petition for *inter partes* review.

Proposed § 42.101(a) would provide that a party or real party in interest must file a petition prior to the filing of a civil action challenging the validity of a claim of the patent. The proposed rule would follow the statutory language of 35 U.S.C. 315(a), as amended, which will provide that *inter partes* reviews are barred by prior filing of such a civil action.

Proposed § 42.101(b) would provide that a petition may not be filed more than one year after the date on which the petitioner, the petitioner's real party in interest, or a privy of the petitioner was served with a complaint alleging infringement. The proposed rule would follow the statutory language of 35 U.S.C. 315(b), as amended, which will provide a one-year time limit after date of service of complaint.

Proposed § 42.101(c) would provide that a person may not file a petition where the petitioner, the petitioner's real party in interest, or a privy of the petitioner is estopped from challenging the claims. The proposed rule is consistent with 35 U.S.C. 315(e)(1), as amended, which will provide for estoppel arising from a final written decision in an *inter partes* review. The proposed rule is also consistent with 35 U.S.C. 325(e)(1), which will provide for estoppel arising from a final written decision in a post-grant review or a covered business method review.

Section 42.102: Proposed § 42.102 would provide a timeliness requirement for filing an *inter partes* review petition.

Proposed § 42.102(a) would provide that a petition for *inter partes* review must be filed consistent with the requirements set forth in 35 U.S.C. 311(c), as amended. Petitions requesting the institution of an *inter partes* review that are filed nine months after the grant of the patent or of the issuance of the reissue patent, but prior to the institution of a post-grant review would be considered timely filed. Additionally, petitions filed after termination of a post-grant review would be considered timely.

Proposed § 42.102(b) would provide that the Director may set a limit on the number of *inter partes* reviews that may be instituted during each of the first four one-year periods after *inter partes* review takes effect. This proposed rule is consistent with section 6(c)(2)(B) of the Leahy-Smith America Invents Act (Pub. L. 112–29, 125 Stat. 284, 304 (2011)), which provides for graduated implementation of *inter partes* reviews. The Office however, does not expect to limit the number of petitions at this time.

Section 42.103: Proposed § 42.103 would set forth the fee requirement for filing an *inter partes* review petition.

Proposed § 42.103(a) would provide that a fee under § 42.15(a) must accompany a petition for *inter partes* review.

Proposed § 42.103(b) would provide that no filing date will be accorded until full payment is received. This proposed rule is consistent with 35 U.S.C. 312(a)(1), as amended, which will provide that a petition may only be considered if the petition is accompanied by the payment of the fee established by the Director.

Section 42.104: Proposed § 42.104 would provide for the content of petitions to institute an *inter partes* review. The proposed rule is consistent with 35 U.S.C 312(a)(4), as amended, which allows the Director to prescribe regulations concerning the information provided with the petition.

Proposed § 42.104(a) would provide that a petition must demonstrate that the petitioner has standing. To establish standing, a petitioner, at a minimum, must certify that the patent is available for *inter partes* review and that the petitioner is not barred or estopped from requesting an *inter partes* review. This proposed requirement would attempt to ensure that a party has standing to file the *inter partes* review and would help prevent spuriously-instituted *inter partes* reviews. Facially-improper standing would be a basis for denying the petition without proceeding to the merits of the petition.

Proposed § 42.104(b) would require that the petition identify the precise relief requested for the claims challenged. Specifically, the proposed rule would require that the petition identify each claim being challenged, the specific grounds on which each claim is challenged, how the claims are to be construed, why the claims as construed are unpatentable under the identified grounds, and the exhibit numbers of the evidence relied upon with a citation to the portion of the evidence that is relied upon to support the challenge. This proposed rule is consistent with 35 U.S.C. 312(a)(3), as amended, which requires that the petition identify, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence supporting the challenge. It is also consistent with 35 U.S.C. 312(a)(4), as amended, which allows the Director to require additional information as part of the petition. The proposed rule would provide an efficient means for identifying the legal and factual basis for satisfying the threshold for instituting *inter partes* review and would provide the patent owner with a minimum level of notice as to the basis for the challenge to the claims.

Proposed § 42.104(c) would provide that a petitioner seeking to correct clerical or typographical mistakes in a petition could file a motion to correct the mistakes. The proposed rule would also provide that the grant of such a motion would not alter the filing date of the petition.

Section 42.105: Proposed § 42.105 would provide petition and exhibit service requirements in addition to the service requirements of § 42.6.

Proposed § 42.105(a) would require that the petitioner serve the patent owner at the correspondence address of record for the subject patent and permits service at any other address known to the petitioner as likely to effect service as well. Once a patent has issued, communications between the Office and the patent owner often suffer. *Ray* v. *Lehman,* 55 F.3d 606 (Fed. Cir. 1995) (patentee's failure to maintain correspondence address contributed to failure to pay maintenance fee and therefore expiration of the patent). While the proposed rule requires service at the correspondence address of record in the patent, the petitioner will already be in communication with the patent owner in many cases at a better service address than the correspondence address of record for the subject patent.

Proposed § 42.105(b) would address the situation where service to the official correspondence address of the patent does not result in actual service on the patent owner. When the petitioner becomes aware of a service problem, the petitioner would be required to promptly advise the Board of the problem. The petitioner might then be required to certify that it is not aware of any better address for service of the patent owner. The Board may authorize other forms of service, such as service by publication in the Official Gazette of the United States Patent and Trademark Office or **Federal Register**.

Section 42.106: Proposed § 42.106 would provide for the filing date requirements of an *inter partes* review petition.

Proposed § 42.106(a) would provide requirements for a complete petition. 35 U.S.C. 312(a), as amended, states that a petition may only be considered when the petition identifies all the real parties in interest, when a copy of the petition is provided to the patent owner or the owner's representative and the petition is accompanied by the fee established by the Director. Consistent with the statute, the proposed rule would require that a petition to institute an *inter partes* review will not be accorded a filing date until the petition: (1) Complies with § 42.104; (2) is served upon the patent owner at the correspondence address of record provided in § 42.105(a); and (3) is accompanied by the fee set forth in § 42.15(a).

Proposed § 42.106(b) would provide petitioners a one month time frame to correct defective petitions to institute an *inter partes* review. The proposed rule is consistent with the requirement of 35 U.S.C. 312(a), as amended, that the Board may not consider a petition that fails to meet the statutory requirements for a petition. In determining whether to grant a filing date, the Board would review the petitions for procedural compliance. Where a procedural defect is noted, *e.g.,* failure to state the claims being challenged, the Board would notify the petitioner that the petition was incomplete and identify any non-compliance issues.

Section 42.107: Proposed § 42.107 would set forth the procedure in which the patent owner may file a preliminary response.

Proposed § 42.107(a) would provide that the patent owner may file a preliminary response to the petition. The rule is consistent with 35 U.S.C. 313, as amended, which provides for such a response.

Proposed § 42.107(b) would provide that the due date for the preliminary response to petition is no later than two months from the date of the notice that the request to institute an *inter partes* review has been granted a filing date. This proposed rule is consistent with 35 U.S.C. 313, as amended, which provides that the Director shall set a time period for filing the preliminary patent owner response.

Under 35 U.S.C. 314(b), as amended, the Board has three months from the filing of the preliminary patent owner response, or three months from the date such a response was due, to determine whether to institute the review. A patent owner seeking a shortened period for such a determination may wish to file a preliminary patent owner response well before the date the preliminary

patent owner response is due, including filing a paper stating that no preliminary patent owner response will be filed. No adverse inferences will be drawn where a patent owner elects not to file a response or elects to waive the response.

Proposed § 42.107(c) would provide that the preliminary patent owner response would not be allowed to present new testimony evidence, for example, expert witness testimony on patentability. 35 U.S.C. 313, as amended, will provide that a preliminary patent owner response set forth reasons why no *inter partes* review should be instituted. In contrast, 35 U.S.C. 316(a)(8), as amended, provides for a patent owner response after institution and requires the presentation, through affidavits or declarations, of any additional factual evidence and expert opinions on which the patent owner relies in support of the response. The difference in statutory language demonstrates that 35 U.S.C. 313, as amended, does not require the presentation of evidence in the form of testimony in support of a preliminary patent owner response and the proposed rule reflects this distinction. In certain instances, however, a patent owner may be granted additional discovery before filing their preliminary response and submit any testimonial evidence obtained through the discovery. For example, additional discovery may be authorized where patent owner raises sufficient concerns regarding the petitioner's certification of standing.

Proposed § 42.107(d) would provide that the preliminary patent owner response would not be allowed to include any amendment. *See* proposed § 42.121 for filing a motion to amend the patent after an *inter partes* review has been instituted.

Proposed § 42.107(e) would provide that the patent owner may file a statutory disclaimer under 35 U.S.C. 253(a) in compliance with § 1.321(a), disclaiming one or more claims in the patent, and no *inter partes* review will be instituted based on disclaimed claims.

Section 42.108: Proposed § 42.108 would provide for the institution of an *inter partes* review.

35 U.S.C. 314(a), as amended, states that the Director may not authorize an *inter partes* review to be instituted, unless the Director determines that the information in the petition, and any preliminary patent owner response, shows that there is a reasonable likelihood of success that the petitioner would prevail with respect to at least one of the claims challenged in the petition. Proposed § 42.108 is consistent with this statutory requirement and identifies how the Board may authorize such a review to proceed.

Proposed § 42.108(a) would provide that the Board may authorize the review to proceed on all or some of the challenged claims and on all or some of the grounds of unpatentability asserted for each claim. Specifically, in instituting the review, the Board would authorize the review to proceed on the challenged claims for which the threshold requirements for the proceeding have been met. The Board will identify which of the grounds the review will proceed upon on a claim-by-claim basis. Any claim or issue not included in the authorization for review is not part of the review. The Office intends to publish a notice of the institution of an *inter partes* review in the Official Gazette.

Proposed § 42.108(b) would provide that the Board, prior to institution of a review, may deny some or all grounds for unpatentability on some or all of the challenged claims. This proposed rule is consistent with the efficient administration of the Office, which is a consideration in prescribing *inter partes* review regulations under 35 U.S.C. 316(b), as amended.

Proposed § 42.108(c) would provide that the institution is based on a reasonable likelihood standard and is consistent with the requirements of 35 U.S.C. 314(a), as amended. A reasonable likelihood standard is a somewhat flexible standard that allows the judge room for the exercise of judgment.

Section 42.120: Proposed § 42.120 would set forth the procedure in which the patent owner may file a patent owner response.

Proposed § 42.120(a) would provide for a patent owner response and is consistent with the requirements of 35 U.S.C. 316(a)(8), as amended.

Proposed § 42.120(b) would provide that if no time for filing a patent owner response to a petition is provided in a Board order, the default time for filing the response would be two months from the date the *inter partes* review was instituted. The Board's experience with patent owner responses is that two months provides a sufficient amount of time to respond in a typical case, especially as the patent owner would already have been provided two months to file a preliminary patent owner response prior to institution of the *inter partes* review. Additionally, the proposed time for response is consistent with the requirement that the trial be conducted such that a final decision is rendered within one year of the institution of the review. 35 U.S.C. 316(a)(11), as amended.

Section 42.121: Proposed § 42.121 would provide a procedure for a patent owner to file motions to amend the patent.

Proposed § 42.121(a) would make it clear that the first motion to amend need not be authorized by the Board. If the motion complies with the timing and procedural requirements, the motion would be entered. Additional motions to amend would require prior Board authorization. All motions to amend, even if entered, will not automatically result in entry of the proposed amendment into the patent.

The requirement to consult the Board reflects the Board's need to regulate the substitution of claims and the amendment of the patent to control unnecessary proliferation of issues and abuses. The proposed rule aids in the efficient administration of the Office and the timely completion of the review under 35 U.S.C. 316(b), as amended.

Proposed § 42.121(b) would provide that a motion to amend the claims must set forth: (1) The support in the original disclosure of the patent for each claim that is added or amended, and (2) the support in an earlier filed disclosure for each claim for which benefit of the filing date of the earlier filed disclosure is sought.

Proposed § 42.121(c) would provide that a motion to amend the claims will not be authorized where the amendment does not respond to the ground of unpatentability involved in the trial or seeks to enlarge the scope of the claims or introduce new matter. The proposed rule aids the efficient administration of the Office and the timely completion of the review under 35 U.S.C. 316(b), as amended, and also is consistent with 35 U.S.C. 316(d)(3), as amended, which prohibits enlarging the scope of the claims or introducing new matter.

Under the proposed rules, a patent owner may request filing more than one motion to amend its claims during the course of the proceeding. Additional motions to amend may be permitted upon a demonstration of good cause by the patent owner. In considering whether good cause is shown, the Board will take into account how the filing of such motions would impact the timely completion of the proceeding and the additional burden placed on the petitioner. Specifically, belated motions to amend may cause the integrity and efficiency of the review to suffer as the petitioner may be required to devote significant time and resources on claims that are of constantly changing scope. Further, due to time constraints, motions to amend late in the process may not provide a petitioner a full and fair opportunity to respond to the newly

presented subject matter. Accordingly, the longer a patent owner waits to request authorization to file an additional motion to amend, the higher the likelihood the request will be denied. Similarly, motions to amend may be permitted upon a joint request of the petitioner and the patent owner to advance settlement where the motion does not jeopardize the ability of the Office to timely complete the proceeding.

Section 42.122: Proposed § 42.122 would prescribe a rule consistent with the requirements of 35 U.S.C. 315(d), as amended, regarding multiple proceedings involving the subject patent. When there is a question of a stay concerning a matter for which a statutory time period is running in one of the proceedings, it is expected that the Director would be consulted prior to issuance of a stay, given that the stay would impact the ability of the Office to meet the statutory deadline. For example, it is expected that the Board would consult the Director prior to the issuance of a stay in an *ex parte* reexamination proceeding where the three month statutory time period under 35 U.S.C. 303 is running.

Section 42.123: Proposed § 42.123 would provide for the filing of supplemental information. 35 U.S.C. 316(a)(3), as amended, provides that the Director will establish regulations establishing procedures for filing supplemental information after the petition is filed. 35 U.S.C. 314(a), as amended, provides that the institution of an *inter partes* review is based upon the information filed in the petition under 35 U.S.C. 311 and any response filed under 35 U.S.C. 313, as amended. As the institution of the *inter partes* review is not based upon supplemental information, the proposed rule would provide that motions identifying supplemental information be filed after the institution of the *inter partes* review.

Rulemaking Considerations

A. Administrative Procedure Act (APA): This notice proposes rules of practice concerning the procedure for requesting an *inter partes* review, and the trial process after initiation of such a review. The changes being proposed in this notice do not change the substantive criteria of patentability. These proposed changes involve rules of agency practice and procedure and/or interpretive rules. *See Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.SC. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rule making for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these changes and the Initial Regulatory Flexibility Act analysis, below, for comment as it seeks the benefit of the public's views on the Office's proposed implementation of these provisions of the Leahy-Smith America Invents Act.

B. Regulatory Flexibility Act: The Office estimates that 460 petitions for *inter partes* review will be filed in fiscal year 2013. This will be the first fiscal year in which *inter partes* review proceedings will be available for an entire fiscal year. The estimate for *inter partes* review petitions is partially based on the number of *inter partes* reexamination requests under 37 CFR 1.915 that have been filed in fiscal years 2010 and 2011.

The Office received 281 requests for *inter partes* reexamination in fiscal year 2010. *See* Table 13B of the United States Patent and Trademark Office Performance and Accountability Report for Fiscal Year 2010, *available at http://www.uspto.gov/about/stratplan/ar/2010/USPTOFY2010PAR.pdf.*

The Office received 374 requests for *inter partes* reexamination in fiscal year 2011. *See* Table 14B of the United States Patent and Trademark Office Performance and Accountability Report for Fiscal Year 2011, *available at http://www.uspto.gov/about/stratplan/ar/2011/USPTOFY2011PAR.pdf.*

Additionally, the Office takes into consideration the recent growth rate in the number of requests for *inter partes* reexamination, the projected growth due to an expansion in the number of eligible patents under the *inter partes* review provisions of the Leahy-Smith America Invents Act (*see* § 6(c)), and the more restrictive filing time period in 35 U.S.C. 315(b), as amended by the Leahy-Smith America Invents Act.

The Office has reviewed the entity status of patents for which *inter partes* reexamination was requested from October 1, 2000, to September 23, 2011. This data only includes filings granted a filing date in the particular year rather than fillings in which a request was received in the year. The first *inter partes* reexamination was filed on July 27, 2001. A summary of that review is provided in Table 1 below. As shown by Table 1, patents known to be owned by a small entity represented 32.79% of patents for which *inter partes* reexamination was requested. Based on an assumption that the same percentage of patents owned by small entities will be subject to *inter partes* review, it is estimated that 151 petitions for *inter partes* review would be filed to seek review of patents owned by a small entity in fiscal year 2013, the first full fiscal year that these proceedings will be available.

TABLE 1—INTER PARTES REEXAMINATION REQUESTS FILED WITH PARENT ENTITY TYPE *

Fiscal year	*Inter partes* reexamination requests filed	Number filed where parent patent is small entity type	Percent small entity type of total
2011	329	123	37.39
2010	255	94	36.86
2009	240	62	25.83
2008	155	52	33.55
2007	127	35	27.56
2006	61	17	27.87
2005	59	18	30.51
2004	26	5	19.23

TABLE 1—INTER PARTES REEXAMINATION REQUESTS FILED WITH PARENT ENTITY TYPE *—Continued

Fiscal year	*Inter partes* reexamination requests filed	Number filed where parent patent is small entity type	Percent small entity type of total
2003	21	12	57.14
2002	4	1	25.00
2001	1	0	0.00
	1,278	419	32.79

* Small entity status determined by reviewing preexamination small entity indicator for the parent patent.

Based on the number of patents issued during fiscal years 1995 through 1999 that paid the small entity third stage maintenance fee, the number of patents issued during fiscal years 2000 through 2003 that paid the small entity second stage maintenance fee, the number of patents issued during fiscal years 2004 through 2007 that paid the first stage maintenance fee, and the number of patents issued during fiscal years 2008 through 2011 that paid a small entity issue fee, there are no less than 375,000 patents owned by small entities in force as of October 1, 2011.

Furthermore, the Office recognizes that there would be an offset to this number for patents that expire earlier than twenty years from their filing date due to a benefit claim to an earlier application or due to a filing of a terminal disclaimer. The Office likewise recognizes that there would be an offset in the opposite manner due to the accrual of patent term extension and adjustment. The Office, however, does not maintain data on the date of expiration by operation of a terminal disclaimer. Therefore, the Office has not adjusted the estimate of 375,000 patents owned by small entities in force as of October 1, 2011. While the Office maintains information regarding patent term extension and adjustment accrued by each patent, the Office does not collect data on the expiration date of patents that are subject to a terminal disclaimer. As such, the Office has not adjusted the estimated of 375,000 patents owned by small entities in force as of October 1, 2011, for accrual of patent term extension and adjustment, because in view of the incomplete terminal disclaimer data issue, would be incomplete and any estimate adjustment would be administratively burdensome. Thus, it is estimated that the number of small entity patents in force in fiscal year 2013 will be at least 375,000.

Based on the estimated number of patents in force, the number of small entity owned patents impacted by *inter partes* review in fiscal year 2013 (151 patents) would be less than 0.05% (151/375,000) of all patents in force that are owned by small entities. The USPTO nonetheless has undertaken an Initial Regulatory Flexibility Act Analysis of the proposed rule.

1. Description of the Reasons That Action by the Office Is Being Considered: On September 16, 2011, the Leahy-Smith America Invents Act was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)). Section 6 of the Leahy-Smith America Invents Act amends chapter 31 of title 35, United States Code, to create a new *inter partes* review proceeding which will take effect on September 16, 2012, one year after the date of enactment, and eliminate *inter partes* reexamination (except for requests filed before the effective date of September 16, 2012). For the implementation, § 6(c) of the Leahy-Smith America Invents Act requires that the Director issue regulations to carry out chapter 31 as amended of title 35, United States Code, within one year after the date of enactment. Public Law 112–29, § 6(c), 125 Stat. 284, 304 (2011).

2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rules: The proposed rules seek to implement *inter partes* review as authorized by the Leahy-Smith America Invents Act. The Leahy-Smith America Invents Act requires that the Director prescribe rules for the *inter partes* review that result in a final determination not later than one year after the date on which the Director notices the institution of a proceeding. The one-year period may be extended for not more than six months if good cause is shown. *See* 35 U.S.C. 316(a)(11), as amended. The Leahy-Smith America Invents Act also requires that the Director, in prescribing rules for the *inter partes* review, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings. *See* 35 U.S.C. 316(b), as amended. Consistent with the time periods provided in 35 U.S.C. 316(a)(11), as amended, the proposed rules are designed to, except where good cause is shown to exist, result in a final determination by the Patent Trial and Appeal Board within one year of the notice of initiation of the review. This one-year review will enhance the effect on the economy, and improve the integrity of the patent system and the efficient administration of the Office.

3. Description and Estimate of the Number of Affected Small Entities: The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the Regulatory Flexibility Act, and after consultation with the Small Business Administration, the Office has formally adopted an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR 67109 (Nov. 20, 2006), 1313 *Off. Gaz. Pat. Office* 60 (Dec. 12, 2006). This alternate small business size standard is SBA's previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. *See* 13 CFR 121.802. If patent applicants identify themselves on a patent application as qualifying for reduced patent fees, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Unlike the SBA small business size standards set forth in 13 CFR 121.201, the size standard for USPTO is not industry-specific. The Office's definition of a small business concern

for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 67112 (Nov 20, 2006), 1313 *Off. Gaz. Pat. Office* at 63 (Dec. 12, 2006).

As discussed above, it is anticipated that 460 petitions for *inter partes* review will be filed in fiscal year 2013. The Office has reviewed the percentage of patents for which *inter partes* reexamination was requested from October 1, 2000, to September 23, 2011. A summary of that review is provided in Table 1 above. As demonstrated by Table 1, patents known to be owned by a small entity represent 32.79% of patents for which *inter partes* reexamination was requested. Based on an assumption that the same percentage of patents owned by small entities will be subject to the new review proceedings, it is estimated that 151 patents owned by small entities would be affected by an *inter partes* review.

The USPTO estimates that 2.5% of patent owners will file a request for adverse judgment prior to a decision to institute and that another 2.5% will file a request for adverse judgment or fail to participate after initiation. Specifically, an estimated 21 patent owners will file a request for adverse judgment or fail to participate after institution in *inter partes* review. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%) from October 1, 2000 to September 23, 2011, it is estimated that 7 small entities will file such requests or fail to participate in *inter partes* review proceedings.

Under the proposed rules, prior to determining whether to institute a review, the patent owner may file an optional patent owner preliminary response to the petition. Given the new time period requirements to file a petition for review before the Board relative to patent enforcement proceedings and the desire to avoid the cost of a trial and delays to related infringement actions, it is anticipated that 90% of petitions, other than those for which a request for adverse judgment is filed, will result in the filing of a patent owner preliminary response. Where an *inter partes* review petition is filed close to the expiration of the one-year period set forth in 35 U.S.C. 315(b), as amended, a patent owner would likely be advantaged by filing a successful preliminary response. In view of these considerations, it is anticipated that 90% of patent owners will file a preliminary response. Specifically, the Office estimates that 406 patent owners will file a preliminary response to an *inter partes* review petition. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 133 small entities will file a preliminary response to an *inter partes* review petition in fiscal year 2013.

Under the proposed rules, the Office will determine whether to institute a trial within three months after the earlier of: (1) The submission of a patent owner preliminary response, (2) the waiver of filing a patent owner preliminary response, or (3) the expiration of the time period for filing a patent owner preliminary response. If the Office decides not to institute a trial, the petitioner may file a request for reconsideration of the Office's decision. In estimating the number of requests for reconsideration, the Office considered the percentage of *inter partes* reexaminations that were denied relative to those that were ordered (24 divided by 342, or 7%) in fiscal year 2011. *See* Reexaminations—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.* The Office also considered the impact of: (1) Patent owner preliminary responses under newly authorized in 35 U.S.C. 313, as amended, (2) the enhanced thresholds for instituting reviews set forth in 35 U.S.C. 314(a), as amended, which would tend to increase the likelihood of dismissing a petition for review, and (3) the more restrictive time period for filing a petition for review in 35 U.S.C. 315(b), as amended, which would tend to reduce the likelihood of dismissing a petition. Based on these considerations, it is estimated that 10% of the petitions for review (45 divided by 449) would be dismissed.

During fiscal year 2011, the Office issued twenty-one decisions following a request for reconsideration of a decision on appeal in *inter partes* reexamination. The average time from original decision to decision on reconsideration was 4.4 months. Thus, the decisions on reconsideration were based on original decisions issued from July 2010 until June 2011. During this time period, the Office mailed sixty-three decisions on appeals in *inter partes* reexamination. *See* BPAI Statistics—Receipts and Dispositions by Technology Center, *http://www.uspto.gov/ip/boards/bpai/stats/receipts/index.jsp* (monthly data). Based on the assumption that the same rate of reconsideration (21 divided by 63 or 33.333%) will occur, the Office estimates that 15 requests for reconsideration will be filed. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that five small entities will file a request for a reconsideration of a decision dismissing the petition for *inter partes* review in fiscal year 2013.

The Office reviewed motions, oppositions, and replies in a number of contested trial proceedings before the trial section of the Board. The review included determining whether the motion, opposition, and reply were directed to patentability grounds and non-priority non-patentability grounds. Based on the review, it is anticipated that *inter partes* reviews will have an average of 6.92 motions, oppositions, and replies per trial after institution. Settlement is estimated to occur in 20% of instituted trials at various points of the trial. In the trials that are settled, it is estimated that only 50% of the noted motions, oppositions, and replies would be filed.

After an *inter partes* review trial has been instituted but prior to a final written decision, parties to a review may request an oral hearing. It is anticipated that 411 requests for oral hearings will be filed based on the number of requests for oral hearings in *inter partes* reexamination, the stated desirability for oral hearings during the legislative process, and the public input received prior to this notice of proposed rulemaking. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 135 small entities will file a request for oral hearing in the *inter partes* reviews instituted in fiscal year 2013.

Parties to an *inter partes* review may file requests to treat a settlement as business confidential and requests for adverse judgment. A written request to make a settlement agreement available may also be filed. Given the short time period set for conducting trials, it is anticipated that the alternative dispute resolution options will be infrequently used. The Office estimates that 16

requests to treat a settlement as business confidential and 91 requests for adverse judgment, default adverse judgment, or settlement notices will be filed. The Office also estimates that 16 requests to make a settlement available will be filed. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 5 small entities will file a request to treat a settlement as business confidential, and thirty small entities will file a request for adverse judgment, default adverse judgment notices, or settlement notices in the *inter partes* reviews instituted in fiscal year 2013.

Parties to an *inter partes* review may seek judicial review of the final decision of the Board. Historically, 33% of examiner's decisions in *inter partes* reexamination proceedings have been appealed to the Board. It is anticipated that 16% of final decisions of the Board would be appealed. The reduction in appeal rate is based on the higher threshold for institution, the focused process, and the experience of the Board in conducted contested cases. Therefore, it is estimated that 46 would seek judicial review of the final decisions of the Board in *inter partes* reviews instituted in fiscal year 2013. Furthermore, based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that fifteen small entities would seek judicial review of final decisions of the Board in the *inter partes* reviews instituted in fiscal year 2013.

4. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record: Based on the filing trends of *inter partes* reexamination requests, it is anticipated that petitions for *inter partes* review will be filed across all technologies with approximately 50% being filed in electrical technologies, approximately 30% in mechanical technologies, and the remaining 20% in chemical technologies and design. Under the proposed rules, a person who is not the owner of a patent may file a petition to institute a review of the patent, with a few exceptions. Given this, it is anticipated that a petition for review is likely to be filed by an entity practicing in the same or similar field as the patent. Therefore, it is anticipated that 50% of the petitions for review will be filed in the electronic field, 30% in the mechanical field, and 20% in the chemical or design fields.

Preparation of the petition would require analyzing the patent claims, locating evidence supporting arguments of unpatentability, and preparing the petition seeking review of the patent. This notice provides the proposed procedural requirements that are common for the new trials. Additional requirements are provided in contemporaneous trial specific proposed rulemaking. The procedures for petitions to institute an *inter partes* review are proposed in §§ 42.5, 42.6, 42.8, 42.11, 42.13, 42.20, 42.21, 42.22, 42.24(a)(1), 42.63, 42.65, and 42.101 through 42.105.

The skills necessary to prepare a petition for review and to participate in a trial before the Patent Trial and Appeal Board would be similar to those needed to prepare a request for *inter partes* reexamination, to represent a party in an *inter partes* reexamination, and to represent a party in an interference proceeding before the Patent Trial and Appeal Board. This level of skill is typically possessed by a registered patent practitioner having devoted professional time to the particular practice area, typically under the supervision of a practitioner skilled in the particular practice area. Where authorized by the Board, a non-registered practitioner may be admitted *pro hac vice,* on a case-by-case basis based on the facts and circumstances of the trial and party, as well as the skill of the practitioner.

The cost of preparing a petition for *inter partes* review is anticipated to be the same as the cost for preparing a request for *inter partes* reexamination. The American Intellectual Property Law Association's *AIPLA Report of the Economic Survey 2011* reported that the average cost of preparing a request for *inter partes* reexamination was $46,000. Based on the work required to prepare and file such a request, the Office considers the reported cost as a reasonable estimate. Accordingly, the Office estimates that the cost of preparing a petition for *inter partes* review would be $46,000 (including expert costs).

The filing of a petition for review would also require payment by the petitioner of the appropriate petition fee to recover the aggregate cost for providing the review. The appropriate petition fee would be determined by the number of claims for which review is sought and the type of review. The proposed fees for filing a petition for *inter partes* review are: $27,200 for requesting review of 20 or fewer claims, $34,000 to request review of 21 to 30 claims, $40,800 to request review of 31 to 40 claims, $54,400 to request review of 41 to 50 claims, $68,000 to request review of 51 to 60 claims, and an additional $27,200 to request review of additional groups of 10 claims.

In setting fees, the estimated information technology cost to establish the process and maintain the filing and storage system through 2017 is to be recovered by charging each petition $2,270. The remainder of the fee is to recover the cost for judges to determine whether to institute a review and conduct the review, together with a proportionate share of indirect costs, *e.g.,* rent, utilities, additional support, and administrative costs. Based on the direct and indirect costs, the fully burdened cost per hour for judges to decide a petition and conduct a review is estimated to be $258.32.

For a petition for *inter partes* review with 20 or fewer challenged claims, it is anticipated that 97 hours of judge time would be required. For 21 to 30 challenged claims, an additional 24 hours is anticipated for a total of 121 hours of judge time. For 31 to 40 challenged claims, an additional 48 hours is anticipated for a total of 145 hours of judge time. For 41 to 50 challenged claims, an additional 97 hours is anticipated for a total of 194 hours of judge time. For 51 to 60 claims, an additional 145 hours is anticipated for a total of 242 hours of judge time. The increase in adjustment reflects the added complexity that typically occurs as more claims are in dispute.

The proposed rules would permit the patent owner to file a preliminary response to the petition setting forth the reasons why no review should be initiated. The procedures for a patent owner to file a preliminary response as an opposition are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.107, 42.120, 42.207, and 42.220. The patent owner is not required to file a preliminary response. The Office estimates that the preparation and filing of a patent owner preliminary response would require 100 hours of professional time and cost $34,000 (including expert costs). The *AIPLA Report of the Economic Survey 2011* reported that the average cost for *inter partes* reexamination including of the request ($46,000), the first patent owner response, and third party comments was $75,000 (*see* I–175) and the median billing rate for professional time of $340 per hour for attorneys in private firms (*see 8).* Thus, the cost of the first patent owner reply and the third party statement is $29,000. The Office finds these costs to be reasonable

estimates. The patent owner reply and third party statement, however, occur after the examiner has made an initial threshold determination and made only the appropriate rejections. Accordingly, it is anticipated that filing a patent owner preliminary response to a petition for review would cost more than the initial reply in a reexamination, an estimated $34,000 (including expert costs).

The Office will determine whether to institute a trial within three months after the earlier of: (1) The submission of a patent owner preliminary response, (2) the waiver of filing a patent owner preliminary response, or (3) the expiration of the time period for filing a patent owner preliminary response. If the Office decides not to institute a trial, the petitioner may file a request for reconsideration of the Office's decision. It is anticipated that a request for reconsideration will require 80 hours of professional time to prepare and file, for a cost of $27,200. This estimate is based on the complexity of the issues and desire to avoid time bars imposed by 35 U.S.C. 315(b), as amended, and 35 U.S.C. 325(b).

Following institution of a trial, the parties may be authorized to file various motions, *e.g.,* motions to amend and motions for additional discovery. Where a motion is authorized, an opposition may be authorized, and where an opposition is authorized, a reply may be authorized. The procedures for filing a motion are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(5), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.121, 42.221, 42.123, and 42.223. The procedures for filing an opposition are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.107, 42.120, 42.207, and 42.220. The procedures for filing a reply are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(c), 42.51, 42.52, 42.53, 42.54, 42.63, and 42.65. As discussed previously, the Office estimates that the average *inter partes* review will have 6.92 motions, oppositions, and replies after institution.

The *AIPLA Report of the Economic Survey 2011* reported that the average cost in contested cases before the trial section of the Board prior to the priority phase was $322,000 per party. Because of the overlap of issues in patentability grounds, it is expected that the cost per motion will decline as more motions are filed in a proceeding. It is estimated that a motion, opposition, or reply in an *inter partes* review is estimated at $47,600 (including expert costs). Based on the work required to file and prepare such briefs, the Office considers the reported cost as a reasonable estimate.

After a trial has been instituted but prior to a final written decision, parties to a review may request an oral hearing. The procedure for filing requests for oral argument is proposed in § 42.70. The *AIPLA Report of the Economic Survey 2011* reported that the third quartile cost of an *ex parte* appeal with an oral argument is $12,000, while the third quartile cost of an *ex parte* appeal without an oral argument is $6,000. In view of the reported costs, which the Office finds reasonable, and the increased complexity of an oral hearing with multiple parties, it is estimated that the cost per party for oral hearings would be $6,800 or $800 more than the reported third quartile cost for an *ex parte* oral hearing.

Parties to an *inter partes* review may file requests to treat a settlement as business confidential and requests for adverse judgment. A written request to make a settlement agreement available may also be filed. The procedures to file requests that a settlement be treated as business confidential are proposed in § 42.74(c). The procedures to file requests for adverse judgment are proposed in § 42.73(b). The procedures to file requests to make a settlement agreement available are proposed in § 42.74(c)(2). It is anticipated that requests to treat a settlement as business confidential will require two hours of professional time or $680. It is anticipated that requests for adverse judgment will require one hour of professional time or $340. It is anticipated that requests to make a settlement agreement available will require 1 hour of professional time or $340. The requests to make a settlement agreement available will also require payment of a fee of $400 specified in proposed § 42.15(d).

Parties to a review proceeding may seek judicial review of the judgment of the Board. The procedures to file notices of judicial review of a Board decision, including notices of appeal and notices of election provided for 35 U.S.C. 141, 142, 145, and 146, are proposed in §§ 90.1 through 90.3. The submission of a copy of a notice of appeal or a notice of election is anticipated to require six minutes of professional time at a cost of $34.

5. Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Rules on Small Entities:

Size of petitions and motions: The Office considered whether to apply a page limit and what an appropriate page limit would be. The Office does not currently have a page limit on *inter partes* reexamination requests. The *inter partes* reexamination requests from October 1, 2010, to June 30, 2011, averaged 246 pages. Based on the experience of processing *inter partes* reexamination requests, the Office finds that the very large size of the requests has created a burden on the Office that hinders the efficiency and timeliness of processing the requests, and creates a burden on patent owners. The quarterly reported average processing time from the filing of a request to the publication of a reexamination certificate ranged from 28.9 months to 41.7 months in fiscal year 2009, from 29.5 months to 37.6 months in fiscal year 2010, and from 31.9 to 38.0 months in fiscal year 2011. *See* Reexaminations—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.*

By contrast, the Office has a page limit on the motions filed in contested cases, except where parties are specifically authorized to exceed the limitation. The typical contested case proceeding is subject to a standing order that sets a 50 page limit for motions and oppositions on priority, a 15 page limit for miscellaneous motions (§ 41.121(a)(3)) and oppositions (§ 41.122), and a 25 page limit for other motions (§ 41.121(a)(2)) and oppositions to other motions. In typical proceedings, replies are subject to a 15 page limit if directed to priority, 5 page limit for miscellaneous issues, and 10 page limit for other motions. The average contested case was terminated in 10.1 months in fiscal year 2009, in 12 months in fiscal year 2010, and in 9 months in fiscal year 2011. The percentage of contested cases terminated within two years was 93.7% in fiscal year 2009, 88.0% in fiscal year 2010, and 94.0% in fiscal year 2011. *See* BPAI Statistics—Performance Measures, *http://www.uspto.gov/ip/boards/bpai/stats/perform/index.jsp.*

Comparing the average time period for terminating a contested case, 10.0 to 12.0 months, with the average time period, during fiscal years 2009 through 2011, for completing an *inter partes* reexamination, 28.9 to 41.7 months, indicates that the average interference takes from 24% (10.0/41.7) to 42% (12.0/28.9) of the time of the average *inter partes* reexamination. While several factors contribute to the reduction in time, limiting the size of the requests and motions is considered a significant factor. Proposed § 42.24 would provide page limits for petitions, motions, oppositions, and replies. 35 U.S.C. 316(b), as amended, provides

considerations that are to be taken into account when prescribing regulations including the integrity of the patent system, the efficient administration of the Office, and the ability to complete timely the trials. The page limits proposed in these rules are consistent with these considerations.

Federal courts routinely use page limits in managing motions practice as ''[e]ffective writing is concise writing.'' *Spaziano* v. *Singletary,* 36 F.3d 1028, 1031 n.2 (11th Cir. 1994). Many district courts restrict the number of pages that may be filed in a motion including, for example, the District of Delaware, the District of New Jersey, the Eastern District of Texas, the Northern, Central, and Southern Districts of California, and the Eastern District of Virginia.

Federal courts have found that page limits ease the burden on both the parties and the courts, and patent cases are no exception. *Eolas Techs., Inc.* v. *Adobe Sys., Inc.,* No. 6:09–CV–446, at 1 (E.D. Tex. Sept. 2, 2010) (''The Local Rules' page limits ease the burden of motion practice on both the Court and the parties.''); *Blackboard, Inc.* v. *Desire2Learn, Inc.,* 521 F. Supp. 2d 575, 576 (E.D. Tex. 2007) (The parties ''seem to share the misconception, popular in some circles, that motion practice exists to require federal judges to shovel through steaming mounds of pleonastic arguments in a Herculean effort to uncover a hidden gem of logic that will ineluctably compel a favorable ruling. Nothing could be farther from the truth.''); *Broadwater* v. *Heidtman Steel Prods., Inc.,* 182 F. Supp. 2d 705, 710 (S.D. Ill. 2002) (''Counsel are strongly advised, in the future, to not ask this Court for leave to file any memoranda (supporting or opposing dispositive motions) longer than 15 pages. The Court has handled complicated patent cases and employment discrimination cases in which the parties were able to limit their briefs supporting and opposing summary judgment to 10 or 15 pages.'' (Emphasis omitted)).

The Board's contested cases experience with page limits in motions practice is consistent with that of the federal courts. The Board's use of page limits has shown it to be beneficial without being unduly restrictive for the parties. Page limits have encouraged the parties to focus on dispositive issues, easing the burden of motions practice on the parties and on the Board.

The Board's contested cases experience with page limits is informed by its use of different approaches over the years. In the early 1990s, page limits were not routinely used for motions, and the practice suffered from lengthy and unacceptable delays. To reduce the burden on the parties and on the Board and thereby reduce the time to decision, the Board instituted page limits in the late 1990s for every motion. Page limit practice was found to be effective in reducing the burdens on the parties and improving decision times at the Board. In 2006, the Board revised the page limit practice and allowed unlimited findings of fact and generally limited the number of pages containing argument. Due to abuses of the system, the Board recently reverted back to page limits for the entire motion (both argument and findings of fact).

The Board's current page limits are consistent with the 25-page limits in the Northern, Central, and Southern Districts of California and the Middle District of Florida and exceed the limits in the District of Delaware (20), the Northern District of Illinois (15), the District of Massachusetts (20), the Eastern District of Michigan (20), the Southern District of Florida (20), and the Southern District of Illinois (20).

In a typical proceeding before the Board, a party may be authorized to file a single motion for unpatentability based on prior art, a single motion for unpatentability based upon failure to comply with 35 U.S.C. 112, lack of written description, and/or enablement, and potentially another motion for lack of compliance with 35 U.S.C. 101, although a 35 U.S.C. 101 motion may be required to be combined with the 35 U.S.C. 112 motion. Each of these motions is currently limited to 25 pages in length, unless good cause is shown that the page limits are unduly restrictive for a particular motion.

Under the proposed rules, an *inter partes* review petition would be based upon any grounds identified in 35 U.S.C. 311(b), as amended, *i.e.,* only a ground that could be raised under 35 U.S.C. 102 or 103 and only on the basis of patents or printed publications. Generally, under current practice, a party is limited to filing a single prior art motion, limited to 25 pages in length. The proposed rule would provide up to 50 pages in length for a motion requesting *inter partes* review. Thus, as the proposed page limit doubles the default page limit currently set for a motion before the Board, a 50 page limit is considered sufficient in all but exceptional cases and is consistent with the considerations provided in 35 U.S.C. 316(b), as amended.

The proposed rule would provide that petitions to institute a trial must comply with the stated page limits but may be accompanied by a motion that seeks to waive the page limits. The petitioner must show in the motion how a waiver of the page limits is in the interests of justice. A copy of the desired non-page limited petition must accompany the motion. Generally, the Board would decide the motion prior to deciding whether to institute the trial.

Current Board practice provides a limit of 25 pages for other motions and 15 pages for miscellaneous motions. The Board's experience is that such page limits are sufficient for the parties filing them and do not unduly burden the opposing party or the Board. Petitions to institute a trial would generally replace the current practice of filing motions for unpatentability, as most motions for relief are expected to be similar to the current interference miscellaneous motion practice. Accordingly, the proposed 15 page limit is considered sufficient for most motions but may be adjusted where the limit is determined to be unduly restrictive for the relief requested.

Proposed § 42.24(b) would provide page limits for oppositions filed in response to motions. Current contested cases practice provides an equal number of pages for an opposition as its corresponding motion. This is generally consistent with motions practice in federal courts. The proposed rule would continue the current practice.

Proposed § 42.24(c) would provide page limits for replies. Current contested case practice provides a 15 page limit for priority motion replies, a 5 page limit for miscellaneous (procedural) motion replies, and a 10 page limit for all other motions. The proposed rule is consistent with current contested case practice for procedural motions. The proposed rule would provide a 15 page limit for reply to petitions requesting a trial, which the Office believes is sufficient based on current practice. Current contested case practice has shown that such page limits do not unduly restrict the parties and, in fact, have provided sufficient flexibility to parties to not only reply to the motion but also help to focus on the issues. Thus, it is anticipated that default page limits would minimize the economic impact on small entities by focusing on the issues in the trials.

The Leahy-Smith America Invents Act requires that the Director, in prescribing rules for the *inter partes* reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings. *See* 35 U.S.C. 316(b), as amended. In view of the actual results of the duration of proceedings in *inter partes* reexamination (without page limits) and contested cases (with page limits), proposing procedures with

reasonable page limits would be consistent with the objectives set forth in the Leahy-Smith America Invents Act. Based on our experience on the time needed to complete a non-page limited proceeding, the option of non-page limited proceedings was not adopted.

Fee Setting: 35 U.S.C. 311(a), as amended, requires the Director to establish fees to be paid by the person requesting the review in such amounts as the Director determines to be reasonable, considering the aggregate costs of the review. In contrast to current 35 U.S.C. 311(b) and 312(c), the Leahy-Smith America Invents Act requires the Director to establish more than one fee for reviews based on the total cost of performing the reviews, and does not provide for refund of any part of the fee when the Director determine that the review should not be initiated.

35 U.S.C. 312(a)(1), as amended, further requires that the fee established by the Director under 35 U.S.C. 311(a), as amended, accompany the petition on filing. Accordingly, in interpreting the fee setting authority in 35 U.S.C. 311(a), as amended, it is reasonable that the Director should set a number of fees for filing a petition based on the anticipated aggregate cost of conducting the review depending on the complexity of the review, and require payment of the fee upon filing of the petition.

Based on experience with contested cases and *inter partes* reexamination proceedings, the following characteristics of requests were considered as potential factors for fee setting as each would likely impact the cost of providing the new services. The Office also considered the relative difficulty in administrating each option in selecting the characteristics for which different fees should be paid for requesting review.

I. *Adopted Option.* Number of claims for which review is requested. The number of claims often impacts the complexity of the request and increases the demands placed on the deciding officials. *Cf. In re Katz Interactive Call Processing Patent Litig.,* 639 F.3d 1303, 1309 (Fed. Cir. 2011) (limiting number of asserted claims is appropriate to efficiently manage a case). Moreover, the number of claims for which review is requested can be easily determined and administered, which avoids delays in the Office and the impact on the economy or patent system that would occur if an otherwise meritorious request is refused due to improper fee payment. Any subsequent petition would be time barred in view 35 U.S.C. 315(b), as amended.

II. *Alternative Option I.* Number of grounds for which review is requested. The Office has experience with large numbers of cumulative grounds being presented in *inter partes* reexaminations which often add little value to the proceedings. Allowing for a large number of grounds to be presented on payment of an additional fee(s) is not favored. Determination of the number of grounds in a request may be contentious and difficult and may result in a large amount of high-level petition work. As such, the option would have a negative impact on small entities. Moreover, interferences instituted in the 1980s and early 1990s suffered from this problem as there was no page limit for motions and the parties had little incentive to focus the issues for decision. The resulting interference records were often a collection of disparate issues and evidence. This led to lengthy and unwarranted delays in deciding interference cases as well as increased costs for parties and the Office. Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the *inter partes* reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete the instituted proceedings.

III. *Alternative Option II.* Pages of argument. The Office has experience with large requests in *inter partes* reexamination in which the merits of the proceedings could have been resolved in a shorter request. Allowing for unnecessarily large requests on payment of an additional fee(s) is not favored. Moreover, determination of what should be counted as ''argument'' as compared with ''evidence'' has often proven to be contentious and difficult as administered in the current *inter partes* reexamination appeal process.

In addition, the trial section of the Board recently experimented with motions having a fixed page limit for the argument section and an unlimited number of pages for the statement of facts. Unlimited pages for the statement of facts led to a dramatic increase in the number of alleged facts and pages associated with those facts. For example, one party used approximately 10 pages for a single ''fact'' that merely cut and pasted a portion of a declarant's cross-examination. Based upon the trial section's experience with unlimited pages of facts, the Board recently reverted back to a fixed page limit for the entire motion (argument and facts). Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the *inter partes* patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

IV. *Alternative Option III.* The Office considered an alternative fee setting regime in which fees are charged at various steps in the review process, a first fee on filing of the petition, a second fee if instituted, a third fee on filing a motion in opposition to amended claims, *etc.* The alternative fee setting regime would hamper the ability of the Office to complete timely reviews, would result in dismissal of pending proceedings with patentability in doubt due to non-payment of required fees by third parties, and would be inconsistent with 35 U.S.C. 312, as amended, that requires the fee established by the Director be paid at the time of filing the petition. Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for *inter partes* reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

V. *Alternative Option IV.* The Office also considered setting reduced fees for small and micro entities and to provide refunds if a review is not instituted. The Office may set the fee to recover the cost of providing the services under 35 U.S.C. 41(d)(2)(a). Fees set under this authority are not reduced for small entities, *see* 35 U.S.C. 42(h)(1), as amended. Moreover, the Office does not have authority to refund fees that when paid were not paid by mistake or in excess of that owed. *See* 35 U.S.C. 42(d).

Discovery: The Office considered a procedure for discovery similar to the one available during district court litigation. Discovery of that scope has been criticized sharply, particularly when attorneys use discovery tools as tactical weapons, which hinders the ''just, speedy, and inexpensive determination of every action and proceeding.'' *See* Introduction to *An E-Discovery Model Order,* available at *http://www.cafc.uscourts.gov/images/stories/announcements/Ediscovery_Model_Order.pdf.* Accordingly, this alternative would have been inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the *inter partes* reviews, consider the effect of the rules on the economy, the integrity of the patent system, the

efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

Additional discovery increases trial costs and increases the expenditures of time by the parties and the Board. To promote effective discovery, the proposed rule would require a showing that additional requested discovery is in the interests of justice, placing an affirmative burden upon a party seeking the discovery to show how the proposed discovery would be productive. The Board's interference experience, however, is that such showings are often lacking and authorization for additional discovery is expected to be rare.

The proposed interest of justice standard for additional discovery is consistent with considerations identified in 35 U.S.C. 316(b), as amended, including the efficient administration of the Board and the Board's ability to complete timely trials. Further, the proposed interest of justice standard is consistent with 35 U.S.C. 316(a)(5), as amended, which states that discovery other than depositions of witnesses submitting affidavits and declarations be what is otherwise necessary in the interests of justice.

The Office has proposed a default scheduling order to provide limited discovery as a matter of right and also the ability to seek additional discovery on a case-by-case basis. In weighing the need for additional discovery, should a request be made, the economic impact on the opposing party would be considered which would tend to limit additional discovery where a party is a small entity.

Pro Hac Vice: The Office considered whether to allow counsel to appear *pro hac vice.* In certain cases, highly skilled, but non-registered, attorneys have appeared satisfactorily before the Board in contested cases. The Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause. Proceedings before the Office can be technically complex. Consequently, the grant of a motion to appear *pro hac vice* is a discretionary action taking into account the specifics of the proceedings. Similarly, the revocation of *pro hac vice* is a discretionary action taking into account various factors, including incompetence, unwillingness to abide by the Office's Rules of Professional Conduct, prior findings of misconduct before the Office in other proceedings, and incivility.

The Board's past practice has required the filing of a motion by a registered patent practitioner seeking *pro hac vice* representation based upon a showing of: (1) How qualified the unregistered practitioner is to represent the party in the proceeding when measured against a registered practitioner, and (2) whether the party has a genuine need to have the particular unregistered practitioner represent it during the proceeding. This practice has proven effective in the limited number of contested cases where such requests have been granted. The proposed rule, if adopted, would allow for this practice in the new proceedings authorized by the Leahy-Smith America Invents Act.

The proposed rules would provide a limited delegation to the Board under 35 U.S.C. 2(b)(2) and 32 to regulate the conduct of counsel in Board proceedings. The proposed rule would delegate to the Board the authority to conduct counsel disqualification proceedings while the Board has jurisdiction over a proceeding. The rule would also delegate to the Chief Administrative Patent Judge the authority to make final a decision to disqualify counsel in a proceeding before the Board for the purposes of judicial review. This delegation would not derogate from the Director the prerogative to make such decisions, nor would it prevent the Chief Administrative Patent Judge from further delegating authority to an administrative patent judge.

The Office considered broadly permitting practitioners not registered to practice by the Office to represent parties in trial as well as categorically prohibiting such practice. A prohibition on the practice would be inconsistent with the Board's experience, and more importantly, might result in increased costs particularly where a small entity has selected its district court litigation team for representation before the Board and has a patent review filed after litigation efforts have commenced. Alternatively, broadly making the practice available would create burdens on the Office in administering the trials and in completing the trial within the established time frame, particularly if the selected practitioner does not have the requisite skill. In weighing the desirability of admitting a practitioner *pro hac vice,* the economic impact on the party in interest would be considered which would tend to increase the likelihood that a small entity could be represented by a non-registered practitioner. Accordingly, the alternatives to eliminate *pro hac vice* practice or to permit it more broadly would have been inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the *inter partes* reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

Threshold for Instituting a Review: The Office considered whether the threshold for instituting a review could be set as low as or lower than the threshold for *ex parte* reexamination. This alternative could not be adopted in view of the statutory requirements in 35 U.S.C. 314, as amended.

Default Electronic Filing: The Office considered a paper filing system and a mandatory electronic filing system (without any exceptions) as alternatives to the proposed requirement that all papers are to be electronically filed, unless otherwise authorized.

Based on the Office's experience, a paper-based filing system increases delay in processing papers, delay in public availability, and the chance that a paper may be misplaced or made available to an improper party if confidential. Accordingly, the alternative of a paper-based filing system would have been inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the *inter partes* reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

An electronic filing system (without any exceptions) that is rigidly applied would result in unnecessary cost and burdens, particularly where a party lacks the ability to file electronically. By contrast, if the proposed option is adopted, it is expected that the entity size and sophistication would be considered in determining whether alternative filing methods would be authorized.

6. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict with the Proposed Rules:

37 CFR 1.99 provides for the submission of information after publication of a patent application during examination by third parties.

37 CFR 1.171–1.179 provide for applications to reissue a patent to correct errors, including where a claim in a patent is overly broad.

37 CFR 1.291 provides for the protest against the issuance of a patent during examination.

37 CFR 1.321 provides for the disclaimer of a claim by a patentee.

37 CFR 1.501 and 1.502 provide for *ex parte* reexamination of patents. Under these rules, a person may submit to the Office prior art consisting of patents or printed publications that are pertinent

to the patentability of any claim of a patent, and request reexamination of any claim in the patent on the basis of the cited prior art patents or printed publications. Consistent with 35 U.S.C. 302–307, *ex parte* reexamination rules provide a different threshold for initiation, require the proceeding to be conducted by an examiner with a right of appeal to the Patent Trial and Appeal Board, and allow for limited participation by third parties.

37 CFR 1.902–1.997 provide for *inter partes* reexamination of patents. Similar to *ex parte* reexamination, *inter partes* reexamination provides a procedure in which a third party may request reexamination of any claim in a patent on the basis of the cited prior art patents and printed publication. The *inter partes* reexamination practice will be eliminated, except for requests filed before the effective date, September 16, 2012. *See* § 6(c)(3)(C) of the Leahy-Smith America Invents Act.

Other countries have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)). Nevertheless, the Office believes that there are no other duplicative or overlapping foreign rules.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

The Office estimates that the aggregate burden of the proposed rules on the public for implementing the new review procedures is approximately $54.1 million for fiscal year 2013. The USPTO considered several factors in making this estimate.

Based on the petition and other filing requirements for initiating an *inter partes* review proceeding, the USPTO initially estimated the burden of the proposed rules to be $174,500,217 in fiscal year 2013, which represents the sum of the estimated total annual (hour) respondent cost burden ($158,025,744) plus the estimated total annual non-hour respondent cost burden ($16,474,473) provided in Part O, Section II, of this notice, *infra.* However, since the Leahy-Smith America Invents Act also eliminates *inter partes* reexamination practice (except for requests filed before the effective date of September 16, 2012), the burden of the proposed rules should be offset by the elimination of the proceeding and its associated burdens.

It is estimated that 460 new requests for *inter partes* reexamination would have been filed in FY 2012 if the Leahy-Smith America Invents Act had not been enacted. This estimate is based on the number of proceedings filed in fiscal years 2011 (374), 2010 (281), and 2009 (258). Elimination of 460 proceedings reduces the public's burden to pay filing fees by $4,048,000 (460 filings with $8,800 filing fee due) and the public's burden to prepare the requests by $21,160,000 (460 filings with $46,000 average cost to prepare). Based on the assumption that 93% of the requests would be ordered (consistent with the fiscal year 2011 grant rate), the burden to conduct the proceeding till close of prosecution will reduce the public's burden by $89,880,000 (428 proceedings that would be estimated to be granted reexamination multiplied by $210,000 which is average cost cited in the *AIPLA Report of the Economic Survey 2011* per party cost until close of prosecution reduced by the $46,000 request preparation cost). Additionally, the burden on the public to appeal to the Board by $5,358,000 (based on an estimate that 141 proceedings would be appealed to the Board which is estimated based on the number of granted proceedings (428) and the historical rate of appeal to the Board (⅓) and an average public cost of $38,000). Thus, $120,446,000 in public burden will be eliminated by the elimination of new filings of *inter partes* reexamination (the sum of $4,048,000 (the filing fees), $21,160,000 (the cost of preparing requests), $89,880,000 (the prosecution costs), plus $5,358,000 (the burden to appeal to the Board)).

Therefore, the estimated aggregate burden of the proposed rules for implementing the new review proceedings would be $54,054,217 ($174,500,217 minus $120,446,000) in fiscal year 2013.

The USPTO expect several benefits to flow from the Leahy-Smith America Invents Act and these proposed rules. It is anticipated that the proposed rules will reduce the time for reviewing patents at the USPTO. Specifically, 35 U.S.C. 316(a), as amended, provides that the Director prescribe regulations requiring a final determination by the Board within one year of initiation, which may be extended for up to six months for good cause. In contrast, currently for *inter partes* reexamination, the average time from the filing to the publication of a certificate ranged from 28.9 to 41.7 months during fiscal years 2009–2011. *See* Reexamination—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.*

Likewise, it is anticipated that the proposed rules will minimize duplication of efforts. In particular, the Leahy-Smith America Invents Act provides more coordination between district court infringement litigation and *inter partes* review to reduce duplication of efforts and costs. For instance, 35 U.S.C. 315(b), as amended, will require that a petition for *inter partes* review be filed within one year of the date of service of a complaint alleging infringement of a patent. By requiring the filing of an *inter partes* review petition earlier than a request for *inter partes* reexamination, and by providing shorter timelines for *inter partes* review compared with reexamination, it is anticipated that the current high level of duplication between litigation and reexamination will be reduced.

The *AIPLA Report of the Economic Survey 2011* reports that the total cost of patent litigation where the damages at risk are less than $1,000,000 average $916,000, where the damages at risk are between $1,000,000 and $25,000,000 average $2,769,000, and where the damages at risk exceed $25,000,000 average $6,018,000. There may be a significant reduction in overall burden if, as intended, the Leahy-Smith America Invents Act and the proposed rules reduce the overlap between review at the USPTO of issued patents and validity determination during patent infringement actions. Data from the United States district courts reveals that 2,830 patent cases were filed in 2006, 2,896 in 2007, 2,909 in 2008, 2,792 in 2009, and 3,301 in 2010. *See* U.S. Courts, Judicial Business of the United States Courts, *www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2010/appendices/C02ASep10.pdf* (last visited Nov. 11, 2011) (hosting annual reports for 1997–2010). Thus, the Office estimates that a total of approximately 3,300 patent cases (the highest number of yearly filings between 2006 and 2010 rounded to the nearest 100) are likely to be filed annually. The aggregate burden estimate above ($54,054,144) was not offset by a reduction in burden based on improved coordination between district court patent litigation and the new *inter partes* review proceedings.

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned

determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rule making docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996). This rulemaking carries out a statute designed to lessen litigation. *See* H.R. Rep. No. 112–98, at 45–48.

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501–1571.

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321–4370h.

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this notice has been submitted to OMB under OMB control number 0651–00xx. In the Notice ''Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,'' RIN 0651–AC70, the information collection for all of the new trials authorized by the Leahy-Smith America Invents Act were provided. This notice provides the subset of burden created by the *inter partes* review provisions. The proposed collection will be available at the OMB's Information Collection Review Web site at: www.reginfo.gov/public/do/PRAMain.

The USPTO is submitting the information collection to OMB for its review and approval because this notice of proposed rulemaking will add the following to a collection of information:

(1) Petitions to institute an *inter partes* review (§§ 42.5, 42.6, 42.8, 42.11, 42.13, 42.20, 42.21, 42.22, 42.24(a)(1), 42.63, 42.65, and 42.101 through 42.105);

(2) motions (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(5), 42.51 through 42.54, 42.63, 42.64, 42.65, and 42.121);

(3) oppositions (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.107, and 42.120); and

(4) replies provided for in 35 U.S.C. 135 and 311–318, as amended, and new 35 U.S.C. 319 (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(c), 42.51, 42.52, 42.53, 42.54, 42.63, and 42.65).

The proposed rules also permit filing requests for oral argument (§ 42.70) provided for in 35 U.S.C. 316(a)(10), as amended, requests for rehearing (§ 42.71(c)), requests for adverse judgment (§ 42.73(b)), requests that a settlement be treated as business confidential (§ 42.74(b)) provided for in 35 U.S.C. 317, as amended.

I. Abstract: The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, issue applications as patents.

Chapter 31 of title 35, United States Code, in effect on September 16, 2012, provides for *inter partes* review proceedings allowing third parties to petition the USPTO to review the patentability of an issued patent under 35 U.S.C. 102 and 103 based on patents and printed publications. If a trial is initiated by the USPTO based on the

petition, as authorized by the USPTO, additional motions may be filed by the petitioner. A patent owner may file a response to the petition and if a trial is instituted, as authorized by the USPTO, may file additional motions.

In estimating the number of hours necessary for preparing a petition to institute an *inter partes* review, the USPTO considered the estimated cost of preparing a request for *inter partes* reexamination ($46,000), the median billing rate ($340/hour), and the observation that the cost of *inter partes* reexamination has risen the fastest of all litigation costs since 2009 in the *AIPLA Report of the Economic Survey 2011.* It was estimated that a petition for an *inter partes* review and an *inter partes* reexamination request would cost the same to the preparing party ($46,000).

In estimating the number of hours necessary for preparing motions after instituting and participating in the review, the USPTO considered the *AIPLA Report of the Economic Survey 2011* which reported the average cost of a party to a two-party interference to the end of the preliminary motion phase ($322,000) and inclusive of all costs ($631,000). The Office considered that the preliminary motion phase is a good proxy for patentability reviews since that is the period of current contested cases before the trial section of the Board where most patentability motions are currently filed.

The USPTO also reviewed recent contested cases before the trial section of the Board to make estimates on the average number of motions for any matter including priority, the subset of those motions directed to non-priority issues, the subset of those motions directed to non-priority patentability issues, and the subset of those motions directed to patentability issues based on a patent or printed publication on the basis of 35 U.S.C. 102 or 103. The review of current contested cases before the trial section of the Board indicated that approximately 15% of motions were directed to prior art grounds, 18% of motions were directed to other patentability grounds, 27% were directed to miscellaneous issues, and 40% were directed to priority issues. It was estimated that the cost per motion to a party in current contested cases before the trial section of the Board declines because of overlap in subject matter, expert overlap, and familiarity with the technical subject matter. Given the overlap of subject matter, a proceeding with fewer motions will have a somewhat less than proportional decrease in costs since the overlapping costs will be spread over fewer motions.

It is estimated that the cost of an *inter partes* review would be 60% of the cost of current contested cases before the trial section of the Board to the end of the preliminary motion period. An *inter partes* review should have many fewer motions since only one party will have a patent that is the subject of the proceeding (compared with each party having at least a patent or an application in current contested cases before the trial section of the Board). Moreover, fewer issues can be raised since *inter partes* review will not have priority-related issues that must be addressed in current contested cases before the trial section of the Board. Consequently, a 60% weighting factor should capture the typical costs of an *inter partes* review.

The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burdens for the *inter partes* review provisions. Included in this estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the proposed changes in this notice of proposed rulemaking is to implement the changes to Office practice necessitated by section 6(a) of the Leahy-Smith America Invents Act.

The public uses this information collection to request *inter partes* review and to ensure that the associated fees and documentation are submitted to the USPTO.

II. Data

Needs and Uses: The information supplied to the USPTO by a petition to institute an *inter partes* review as well as the motions authorized following the institution is used by the USPTO to determine whether to initiate a review under 35 U.S.C. 314, as amended, and to prepare a final decision under 35 U.S.C. 318, as amended.

OMB Number: 0651–00xx.

Title: Patent Review and Derivation Proceedings.

Form Numbers: None.

Type of Review: New Collection.

Likely Respondents/Affected Public: Individuals or households, businesses, or other for-profit, not-for-profit institutions, farms, Federal Government, and state, local, or tribal governments.

Estimated Number of Respondents/Frequency of Collection: 920 respondents and 4,024 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public from 0.1 to 180.4 hours to gather the necessary information, prepare the documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 464,781.6 hours per year.

Estimated Total Annual (Hour) Respondent Cost Burden: $158,025,744 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of $340 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for this collection will be approximately $158,025,744 per year (464,781.6 hours per year multiplied by $340 per hour).

Estimated Total Annual Non-hour Respondent Cost Burden: $16,474,473 per year. There are no capital start-up or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees and postage costs where filing via mail is authorized. It is estimated that filing via mail will be authorized in one *inter partes* review petition filing and 3 subsequent papers. There are filing fees associated with petitions for *inter partes* review, post-grant review, and covered business method patent review and for requests to treat a settlement as business confidential. The total filing fees for this collection are calculated in the accompanying table. The USPTO estimates that filings authorized to be filed via mail will be mailed to the USPTO by Express Mail using the U.S. Postal Service's flat rate envelope, which can accommodate varying submission weights, estimated in this case to be 16 ounces for the petitions and two ounces for the other papers. The cost of the flat rate envelope is $18.30. The USPTO estimates that the total postage cost associated with this collection will be approximately $73 per year. The USPTO estimates that the total fees associated with this collection will be approximately $16,474,473 per year.

Therefore, the total cost burden in fiscal year 2013 is estimated to be $174,500,217 (the sum of the estimated total annual (hour) respondent cost burden ($158,025,744) plus the estimated total annual non-hour respondent cost burden ($16,474,473)).

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Petition for *inter partes* review	135.3	460	62,238
Reply to initial *inter partes* review petition	100	406	40,600
Request for Reconsideration	80	127	10,160
Motions, replies, and oppositions after institution in *inter partes* review	140	2,453	343,420
Request for oral hearing	20	411	8,220
Request to treat a settlement as business confidential	2	16	32
Request for adverse judgment, default adverse judgment, or settlement	1	91	91
Request to make a settlement agreement available	1	16	16
Notice of judicial review of a Board decision (*e.g.,* notice of appeal under 35 U.S.C. 142)	0.1	46	4.6
Totals		4,026	464,781.6

Item	Estimated annual responses	Fee amount	Estimated annual filing costs
Petition for *inter partes* review	460	$35,800	$16,468,000
Reply to *inter partes* review petition	406	0	0
Request for Reconsideration	127	0	0
Motions, replies, and oppositions after initiation in *inter partes* review	2,453	0	0
Request for oral hearing	411	0	0
Request to treat a settlement as business confidential	16	0	0
Request for adverse judgment, default adverse judgment, or settlement	91	0	0
Request to make a settlement agreement available	16	400	6,400
Notice of judicial review of a Board decision (*e.g.,* notice of appeal under 35 U.S.C. 142)	46	0	0
Totals	4,026		16,474,400

III. Solicitation

The agency is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Interested persons are requested to send comments regarding this information collection by April 10, 2012, to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Nicholas A. Fraser, the Desk Officer for the United States Patent and Trademark Office, and via email at *nfraser@omb.eop.gov;* and (2) The Board of Patent Appeals and Interferences by electronic mail message over the Internet addressed to *inter_partes_review@uspto.gov,* or by mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Judge Michael Tierney, *Inter partes* Review Proposed Rules.''

Notwithstanding any other provision of law, no person is 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 currently valid OMB control number.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

Proposed Amendments to the Regulatory Text

For the reasons stated in the preamble, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office propose to amend 37 CFR part 42 as proposed to be added in the February 9, 2012, issue of the **Federal Register** as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

1. The authority citation for 37 CFR part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326 and Leahy-Smith America Invents Act, Pub. L. 112–29, sections 6(c), 6(f), and 18, 125 Stat. 284, 304, 311, and 329 (2011).

2. Add subpart B to read as follows:

Subpart B—Inter Partes Review

General

Sec.
42.100 Procedure; pendency.
42.101 Who may petition for *inter partes* review.
42.102 Time for filing.
42.103 *Inter partes* review fee.
42.104 Content of petition.
42.105 Service of petition.
42.106 Filing date.
42.107 Preliminary response to petition.

Instituting Inter Partes Review

42.108 Institution of *inter partes* review.

After Institution of Inter Partes Review

42.120 Patent owner response.
42.121 Amendment of the patent.
42.122 Multiple proceedings.
42.123 Filing of supplemental information.

Subpart B—Inter Partes Review

General

§ 42.100 Procedure; pendency.

(a) An *inter partes* review is a trial subject to the procedures set forth in subpart A of this part.

(b) A claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.

(c) An *inter partes* review proceeding shall be administered such that pendency before the Board after institution is normally no more than one year. The time can be extended by up to six months for good cause by the Chief Administrative Patent Judge.

§ 42.101 Who may petition for inter partes review.

A person who is not the owner of a patent may file with the Office a petition to institute an *inter partes* review of the patent unless:

(a) Before the date on which the petition for review is filed, the petitioner or real party in interest filed a civil action challenging the validity of a claim of the patent;

(b) The petition requesting the proceeding is filed more than one year after the date on which the petitioner, the petitioner's real party in interest, or a privy of the petitioner is served with a complaint alleging infringement of the patent; or

(c) The petitioner, the petitioner's real party in interest, or a privy of the petitioner is estopped from challenging the claims on the grounds identified in the petition.

§ 42.102 Time for filing.

(a) A petition for *inter partes* review of a patent must be filed after the later of:

(1) The date that is nine months after the date of the grant of the patent or of the issuance of the reissue patent; or

(2) If a post-grant review is instituted as set forth in subpart C of this part, the date of the termination of such post-grant review.

(b) The Director may impose a limit on the number of *inter partes* reviews that may be instituted during each of the first four one-year periods in which the amendment made to chapter 31 of title 35, United States Code, is in effect by providing notice in the Office's Official Gazette or **Federal Register.** Petitions filed after an established limit has been reached will be deemed untimely.

§ 42.103 Inter partes review fee.

(a) An *inter partes* review fee set forth in § 42.15(a) must accompany the petition.

(b) No filing date will be accorded to the petition until full payment is received.

§ 42.104 Content of petition.

In addition to the requirements of §§ 42.8 and 42.22, the petition must set forth:

(a) *Grounds for standing.* The petitioner must certify that the patent for which review is sought is available for *inter partes* review and that the petitioner is not barred or estopped from requesting an *inter partes* review of the patent.

(b) *Identification of challenge.* Provide a statement of the precise relief requested for each claim challenged. The statement must identify the following:

(1) The claim;

(2) The specific statutory grounds under 35 U.S.C. 102 or 103 on which the challenge to the claim is based and the patents or printed publications relied upon for each ground;

(3) How the challenged claim is to be construed. Where the claim to be construed contains a means-plus-function or step-plus-function limitation as permitted under 35 U.S.C. 112, sixth paragraph, the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function;

(4) How the construed claim is unpatentable under the statutory grounds identified in paragraph (b)(2) of this section. The petition must specify where each element of the claim is found in the prior art patents or printed publications relied upon; and

(5) The exhibit number of the supporting evidence relied upon to support the challenge and state the relevance of the evidence to the challenge raised, including identifying specific portions of the evidence that support the challenge. The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.

(c) A motion may be filed that seeks to correct a clerical or typographical mistake in the petition. The grant of such a motion does not change the filing date of the petition.

§ 42.105 Service of petition.

In addition to the requirements of § 42.6, the petitioner must serve the petition and exhibits relied upon in the petition as follows:

(a) The petition and supporting evidence must be served on the patent owner at the correspondence address of record for the subject patent. The petitioner may additionally serve the petition and supporting evidence on the patent owner at any other address known to the petitioner as likely to effect service.

(b) If the petitioner cannot effect service of the petition and supporting evidence on the patent owner at the correspondence address of record for the subject patent, the petitioner must immediately contact the Board to discuss alternate modes of service.

§ 42.106 Filing date.

(a) *Complete petition.* A petition to institute *inter partes* review will not be accorded a filing date until the petition satisfies all of the following requirements:

(1) Complies with § 42.104;

(2) Service of the petition on the correspondence address of record as provided in § 42.105(a); and

(3) Is accompanied by the fee to institute required in § 42.15(a).

(b) *Incomplete petition.* Where a party files an incomplete petition, no filing date will be accorded, and the Office will dismiss the petition if the deficiency in the petition is not corrected within one month from the notice of an incomplete petition.

§ 42.107 Preliminary response to petition.

(a) The patent owner may file a preliminary response to the petition. The response is limited to setting forth the reasons why no *inter partes* review should be instituted under 35 U.S.C. 314. The response can include evidence except as provided in paragraph (c) of this section. The preliminary response is an opposition for purposes of determining page limits under § 42.24.

(b) *Due date.* The preliminary response must be filed no later than two months after the date of a notice indicating that the request to institute an *inter partes* review has been granted a filing date. A patent owner may expedite the proceeding by filing an election to waive the preliminary patent owner response.

(c) *No new testimonial evidence.* The preliminary response shall not present new testimony evidence beyond that already of record.

(d) *No amendment.* The preliminary response shall not include any amendment.

(e) *Disclaim Patent Claims.* The patent owner may file a statutory disclaimer under 35 U.S.C. 253(a) in compliance with § 1.321(a), disclaiming one or more claims in the patent. No *inter partes* review will be instituted based on disclaimed claims.

Instituting Inter Partes Review

§ 42.108 Institution of inter partes review.

(a) When instituting *inter partes* review, the Board may authorize the review to proceed on all or some of the challenged claims and on all or some of the grounds of unpatentability asserted for each claim.

(b) At any time prior to institution of *inter partes* review, the Board may deny some or all grounds for unpatentability for some or all of the challenged claims. Denial of a ground is a Board decision not to institute *inter partes* review on that ground.

(c) Sufficient grounds. *Inter partes* review shall not be instituted for a ground of unpatentability unless the Board decides that the petition supporting the ground would, if unrebutted, demonstrate that there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a preliminary patent owner response where such a response is filed.

After Institution of Inter Partes Review

§ 42.120 Patent owner response.

(a) *Scope.* A patent owner may file a response to the petition addressing any ground for unpatentability not already denied. A patent owner response is filed as an opposition and is subject to the page limits provided in § 42.24.

(b) *Due date for response.* If no time for filing a patent owner response to a petition is provided in a Board order, the default date for filing a patent owner response is two months from the date the *inter partes* review was instituted.

§ 42.121 Amendment of the patent.

(a) A patent owner may file one motion to amend a patent but only after conferring with the Board. Any additional motions to amend may not be filed without Board authorization.

(b) A motion to amend must set forth:

(1) The support in the original disclosure of the patent for each claim that is added or amended; and

(2) The support in an earlier filed disclosure for each claim for which benefit of the filing date of the earlier filed disclosure is sought.

(c) A motion to amend the claims of a patent will not be authorized where:

(1) The amendment does not respond to a ground of unpatentability involved in the trial; or

(2) The amendment seeks to enlarge the scope of the claims of the patent or introduce new subject matter.

§ 42.122 Multiple proceedings.

Where another matter involving the patent is before the Office, the Board may during the pendency of the *inter partes* review enter any appropriate order regarding the additional matter including providing for the stay, transfer, consolidation, or termination of any such matter.

§ 42.123 Filing of supplemental information.

Once a trial has been instituted, a petitioner may request authorization to file a motion identifying supplemental information relevant to a ground for which the trial has been instituted. The request must be made within one month of the date the trial is instituted.

Dated: January 31, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–2534 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2011–0084]

RIN 0651–AC72

Changes To Implement Post-Grant Review Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes new rules to implement the provisions of the Leahy-Smith America Invents Act that create a new post-grant review proceeding to be conducted before the Patent Trial and Appeal Board (Board). These provisions of the Leahy-Smith America Invents Act will take effect on September 16, 2012, one year after the date of enactment, and generally apply to patents issuing from applications subject to first-inventor-to-file provisions of the Leahy-Smith America Invents Act.

DATES: The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before April 10, 2012 to ensure consideration.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *post_grant_review@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Judge Michael Tierney, Post-Grant Review Proposed Rules.''

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. *See* the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Board of Patent Appeals and Interferences, currently located in Madison East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Michael Tierney, Lead Administrative Patent Judge, Sally Lane, Administrative Patent Judge, Scott Boalick, Lead Administrative Patent Judge, and Robert Clarke, Administrative Patent Judge, Board of Patent Appeals and Interferences, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION: On September 16, 2011, the Leahy-Smith America Invents Act was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)). The purpose of the Leahy-Smith America Invents Act and these proposed regulations is to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs. The preamble of this notice sets forth in detail the procedures by which the Board will conduct post-grant review proceedings. The USPTO is engaged in a transparent process to create a timely, cost-effective alternative to litigation.

Moreover, the rulemaking process is designed to ensure the integrity of the trial procedures. *See* 35 U.S.C. 326(b). The proposed rules would provide a set of rules relating to Board trial practice for post-grant review.

More grounds for seeking post-grant review will be available as compared with *inter partes* review. The grounds for seeking post-grant review includes any ground that could be raised under 35 U.S.C. 282(b)(2) or (3). Such grounds for post-grant review include grounds that could be raised under 35 U.S.C. 102 or 103 including those based on prior art consisting of patents or printed publications. Other grounds available for post-grant review include 35 U.S.C. 101 and 112, with the exception of compliance with the best mode requirement. In contrast, the grounds for seeking *inter partes* review are limited to issues raised under 35 U.S.C. 102 or 103 and only on the basis of prior art consisting of patents or printed publications.

Section 6 of the Leahy-Smith America Invents Act is entitled ''POST-GRANT REVIEW PROCEEDINGS.'' Section 6(d) of the Leahy-Smith America Invents Act, entitled ''POST-GRANT REVIEW,'' adds chapter 32 of title 35, United States Code, also entitled ''POST-GRANT REVIEW.'' In particular, § 6(d) adds 35 U.S.C. 321–329. Public Law 112–29, 125 Stat. 284, 305–311 (2011).

Section 6(d) of the Leahy-Smith America Invents Act adds 35 U.S.C. 321, entitled ''Post-grant review.'' 35 U.S.C. 321(a) will provide that, subject to the provisions of chapter 32 of title 35, United States Code, a person who is not the owner of a patent may file a petition with the Office to institute a post-grant review of the patent. 35 U.S.C. 321(a) will also provide that the Director will establish, by regulation, fees to be paid by the person requesting the review, in such amounts as the Director determines to be reasonable, considering the aggregate costs of the post-grant review. 35 U.S.C. 321(b) will provide that a petitioner in a post-grant review may request to cancel as unpatentable one or more claims of a patent on any ground that could be raised under 35 U.S.C. 282(b)(2) or (3) (relating to invalidity of the patent or any claim). 35 U.S.C. 321(c) will provide that a petition for post-grant review may only be filed not later than the date that is nine months after the date of the grant of the patent or of the issuance of a reissue patent.

Section 6(d) of the Leahy-Smith America Invents Act adds 35 U.S.C. 322, entitled ''Petitions.'' 35 U.S.C. 322(a) will provide that a petition filed under 35 U.S.C. 321 may be considered only if: (1) The petition is accompanied by payment of the fee established by the Director under 35 U.S.C. 321; (2) the petition identifies all real parties in interest; (3) the petition identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim, including (A) copies of patents and printed publications that the petitioner relies upon in support of the petition and (B) affidavits or declarations of supporting evidence and opinions, if the petitioner relies on other factual evidence or on expert opinions; (4) the petition provides such other information as the Director may require by regulation; and (5) the petitioner provides copies of any of the documents required under paragraphs (2), (3), and (4) of 35 U.S.C. 322(a) to the patent owner or, if applicable, the designated representative of the patent owner. 35 U.S.C. 322(b) will provide that, as soon as practicable after the receipt of a petition under 35 U.S.C. 321, the Director will make the petition available to the public.

Section 6(d) of the Leahy-Smith America Invents Act adds 35 U.S.C. 323, entitled ''Preliminary response to petition.'' 35 U.S.C. 323 will provide that, if a post-grant review petition is filed under 35 U.S.C. 321, the patent owner has the right to file a preliminary response to the petition, within a time period set by the Director, that sets forth reasons why no post-grant review should be instituted based upon the failure of the petition to meet any requirement of chapter 32 of title 35, United States Code.

Section 6(d) of the Leahy-Smith America Invents Act adds 35 U.S.C. 324, entitled ''Institution of post-grant review.'' 35 U.S.C. 324(a) will provide that the Director may not authorize a post-grant review to be instituted, unless the Director determines that the information presented in the petition filed under 35 U.S.C. 321, if such information is not rebutted, would demonstrate that it is more likely than not that at least one of the claims challenged in the petition is unpatentable. 35 U.S.C. 324(b) will provide that the determination required under 35 U.S.C. 324(a) may also be satisfied by a showing that the petition raises a novel or unsettled legal question that is important to other patents or patent applications. 35 U.S.C. 324(c) will provide that the Director will determine whether to institute a post-grant review under chapter 32 of title 35, United States Code, pursuant to a petition filed under 35 U.S.C. 321 within three months after: (1) Receiving a preliminary response to the petition under 35 U.S.C. 323; or (2) if no such preliminary response is filed, the last date on which such response may be filed. 35 U.S.C. 324(d) will provide that the Director will notify the petitioner and patent owner, in writing, of the Director's determination under 35 U.S.C. 324(a) or (b), and will make such notice available to the public as soon as is practicable. 35 U.S.C. 324(d) will also provide that such notice will include the date on which the review will commence. 35 U.S.C. 324(e) will provide that the determination by the Director whether to institute a post-grant review under 35 U.S.C. 324 will be final and nonappealable.

Section 6(d) of the Leahy-Smith America Invents Act adds 35 U.S.C. 325, entitled ''Relation to other proceedings or actions.'' 35 U.S.C. 325(a)(1) will provide that a post-grant review may not be instituted under chapter 32 of title 35, United States Code, if, before the date on which the petition for such a review is filed, the petitioner or real party in interest filed a civil action challenging the validity of a claim of the patent. 35 U.S.C. 325(a)(2) will provide for an automatic stay of a civil action brought by the petitioner or real party in interest challenging the validity of a claim of the patent and filed on or after the date on which the petition for post-grant review was filed, until certain specified conditions are met. 35 U.S.C. 325(a)(3) will provide that a counterclaim challenging the validity of a claim of a patent does not constitute a civil action challenging the validity of a claim of a patent for purposes of 35 U.S.C. 325(a).

35 U.S.C. 325(b) will provide that if a civil action alleging infringement of a patent is filed within three months after the date on which the patent is granted, the court may not stay its consideration of the patent owner's motion for a preliminary injunction against infringement of the patent on the basis that a petition for post-grant review has been filed or instituted under chapter 32 of title 35, United States Code.

35 U.S.C. 325(c) will provide that if more than one petition for a post-grant review under chapter 32 of title 35, United States Code, is properly filed against the same patent and the Director determines that more than one of these petitions warrants the institution of a post-grant review under 35 U.S.C. 324, the Director may consolidate such reviews into a single post-grant review.

35 U.S.C. 325(d) will provide that, notwithstanding 35 U.S.C. 135(a), 251, and 252, and chapter 30 of title 35, United States Code, during the

pendency of any post-grant review under chapter 32 of title 35, United States Code, if another proceeding or matter involving the patent is before the Office, the Director may determine the manner in which the post-grant review or other proceeding or matter may proceed, including providing for the stay, transfer, consolidation, or termination of any such matter or proceeding. 35 U.S.C. 325(d) will also provide that, in determining whether to institute or order a proceeding under chapter 32 of title 35, United States Code, chapter 30 of title 35, United States Code, or chapter 31 of title 35, United States Code, the Director may take into account whether, and reject the petition because, the same or substantially the same prior art or arguments previously were presented to the Office.

35 U.S.C. 325(e)(1) will provide that the petitioner in a post-grant review of a claim in a patent under chapter 32 of title 35, United States Code, that results in a final written decision under 35 U.S.C. 328(a), or the real party in interest or privy of the petitioner, may not request or maintain a proceeding before the Office with respect to that claim on any ground that the petitioner raised or reasonably could have raised during that post-grant review. 35 U.S.C. 325(e)(2) will provide for estoppel against a post-grant review petitioner, or the real party in interest or privy of the petitioner, in certain civil actions and certain other proceedings before the International Trade Commission if that post-grant review results in a final written decision under 35 U.S.C. 328(a).

35 U.S.C. 325(f) will provide that a post-grant review may not be instituted under chapter 32 of title 35, United States Code, if the petition requests cancellation of a claim in a reissue patent that is identical to or narrower than a claim in the original patent from which the reissue patent was issued, and the time limitations in 35 U.S.C. 321(c) would bar filing a petition for a post-grant review for such original patent.

Section 6(d) of the Leahy-Smith America Invents Act adds 35 U.S.C. 326, entitled ''Conduct of post-grant review.'' 35 U.S.C. 326(a) will provide that the Director will prescribe regulations: (1) Providing that the file of any proceeding under chapter 32 of title 35, United States Code, will be made available to the public, except that any petition or document filed with the intent that it be sealed will, if accompanied by a motion to seal, be treated as sealed pending the outcome of the ruling on the motion; (2) setting forth the standards for the showing of sufficient grounds to institute a review under 35 U.S.C. 324(a) and (b); (3) establishing procedures for the submission of supplemental information after the petition is filed; (4) establishing and governing a post-grant review under chapter 32 of title 35, United States Code, and the relationship of such review to other proceedings under title 35, United States Code; (5) setting forth standards and procedures for discovery of relevant evidence, including that such discovery will be limited to evidence directly related to factual assertions advanced by either party in the proceeding; (6) prescribing sanctions for abuse of discovery, abuse of process, or any other improper use of the proceeding, such as to harass or to cause unnecessary delay or an unnecessary increase in the cost of the proceeding; (7) providing for protective orders governing the exchange and submission of confidential information; (8) providing for the filing by the patent owner of a response to the petition under 35 U.S.C. 323 after a post-grant review has been instituted, and requiring that the patent owner file with such response, through affidavits or declarations, any additional factual evidence and expert opinions on which the patent owner relies to support the response; (9) setting forth standards and procedures for allowing the patent owner to move to amend the patent under 35 U.S.C. 326(d) to cancel a challenged claim or propose a reasonable number of substitute claims, and ensuring that any information submitted by the patent owner in support of any amendment entered under 35 U.S.C. 326(d) is made available to the public as part of the prosecution history of the patent; (10) providing either party with the right to an oral hearing as part of the proceeding; (11) requiring that the final determination in any post-grant review be issued not later than one year after the date on which the Director notices the institution of a proceeding under chapter 32 of title 35, United States Code, except that the Director may, for good cause shown, extend the one-year period by not more than six months, and may adjust the time periods in this paragraph in the case of joinder under 35 U.S.C. 325(c); and (12) providing the petitioner with at least one opportunity to file written comments within a time period established by the Director.

35 U.S.C. 326(b) will provide that in prescribing regulations under 35 U.S.C. 326, the Director will consider the effect of any such regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely proceedings instituted under chapter 32 of title 35, United States Code.

35 U.S.C. 326(c) will provide that the Patent Trial and Appeal Board will, in accordance with 35 U.S.C. 6, conduct each post-grant review instituted under chapter 32 of title 35, United States Code.

35 U.S.C. 326(d)(1) will provide that during a post-grant review instituted under chapter 32 of title 35, United States Code, the patent owner may file a single motion to amend the patent in one or more of the following ways: (A) Cancel any challenged patent claim; and/or (B) for each challenged claim, propose a reasonable number of substitute claims. 35 U.S.C. 326(d)(2) provides that additional motions to amend may be permitted upon the joint request of the petitioner and the patent owner to materially advance the settlement of a proceeding under 35 U.S.C. 327, or upon the request of the patent owner for good cause shown. 35 U.S.C. 326(d)(3) will provide that an amendment under 35 U.S.C. 326(d) may not enlarge the scope of the claims of the patent or introduce new matter. 35 U.S.C. 326(e) will provide that in a post-grant review instituted under chapter 32 of title 35, United States Code, the petitioner will have the burden of proving a proposition of unpatentability by a preponderance of the evidence.

Section 6(d) of the Leahy-Smith America Invents Act adds 35 U.S.C. 327, entitled ''Settlement.'' 35 U.S.C. 327(a) will provide that a post-grant review instituted under chapter 32 of title 35, United States Code, will be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed. 35 U.S.C. 327(a) will also provide that if the post-grant review is terminated with respect to a petitioner under 35 U.S.C. 327, no estoppel under 35 U.S.C. 325(e) will attach to the petitioner, or to the real party in interest or privy of the petitioner, on the basis of that petitioner's institution of that post-grant review. 35 U.S.C. 327(a) will further provide that if no petitioner remains in the post-grant review, the Office may terminate the post-grant review or proceed to a final written decision under 35 U.S.C. 328(a).

35 U.S.C. 327(b) will provide that any agreement or understanding between the patent owner and a petitioner, including any collateral agreements referred to in such agreement or understanding, made in connection with, or in contemplation of, the termination of a post-grant review under

35 U.S.C. 327 will be in writing, and a true copy of such agreement or understanding will be filed in the Office before the termination of the post-grant review as between the parties. 35 U.S.C. 327(b) will also provide that at the request of a party to the proceeding, the agreement or understanding will be treated as business confidential information, will be kept separate from the file of the involved patents, and will be made available only to Federal Government agencies on written request, or to any person on a showing of good cause.

Section 6(d) of the Leahy-Smith America Invents Act adds 35 U.S.C. 328, entitled ''Decision of the Board.'' 35 U.S.C. 328(a) will provide that if a post-grant review is instituted and not dismissed under chapter 32 of title 35, United States Code, the Patent Trial and Appeal Board will issue a final written decision with respect to the patentability of any patent claim challenged by the petitioner and any new claim added under 35 U.S.C. 326(d).

35 U.S.C. 328(b) will provide that if the Patent Trial and Appeal Board issues a final written decision under 35 U.S.C. 328(a) and the time for appeal has expired or any appeal has terminated, the Director will issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable, confirming any claim of the patent determined to be patentable, and incorporating in the patent by operation of the certificate any new or amended claim determined to be patentable.

35 U.S.C. 328(c) will provide that any proposed amended or new claim determined to be patentable and incorporated into a patent following a post-grant review under chapter 32 of title 35, United States Code, will have the same effect as that specified in 35 U.S.C. 252 for reissued patents on the right of any person who made, purchased, or used within the United States, or imported into the United States, anything patented by such proposed amended or new claim, or who made substantial preparation therefor, before the issuance of a certificate under 35 U.S.C. 328(b).

35 U.S.C. 328(d) will provide that the Office will make available to the public data describing the length of time between the institution of, and the issuance of, a final written decision under 35 U.S.C. 328(a) for each post-grant review.

Section 6(d) of the Leahy-Smith America Invents Act adds 35 U.S.C. 329, entitled ''Appeal.'' 35 U.S.C. 329 will provide that a party dissatisfied with the final written decision of the Patent Trial and Appeal Board under 35 U.S.C. 328(a) may appeal the decision pursuant to 35 U.S.C. 141–144. 35 U.S.C. 329 will also provide that any party to the post-grant review will have the right to be a party to the appeal.

Section 6(f) of the Leahy-Smith America Invents Act is entitled ''REGULATIONS AND EFFECTIVE DATE.'' Section 6(f)(1) of the Leahy-Smith America Invents Act provides that the Director will, not later than the date that is one year after the date of the enactment of the Leahy-Smith America Invents Act, issue regulations to carry out chapter 32 of title 35, United States Code, as added by § 6(d) of the Leahy-Smith America Invents Act.

Section 6(f)(2)(A) of the Leahy-Smith America Invents Act provides that the amendments made by § 6(d) of the Leahy-Smith America Invents Act will take effect upon the expiration of the one-year period beginning on the date of the enactment of the Leahy-Smith America Invents Act and, except as provided in § 18 of the America Invents Act and in § 6(f)(3) of the Leahy-Smith America Invents Act, will apply only to patents described in § 3(n)(1) of the Leahy-Smith America Invents Act. Section 3(n) of the Leahy-Smith America Invents Act is entitled ''EFFECTIVE DATE.'' Section 3(n)(1) of the Leahy-Smith America Invents Act provides:

> (n) EFFECTIVE DATE.—
>
> (1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this section shall take effect upon the expiration of the 18-month period beginning on the date of the enactment of this Act, and shall apply to any application for patent, and to any patent issuing thereon, that contains or contained at any time—
>
> (A) a claim to a claimed invention that has an effective filing date as defined in section 100(i) of title 35, United States Code, that is on or after the effective date described in this paragraph; or
>
> (B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.

For example, the post-grant review provisions will apply to patents issued from applications that have an effective filing date on or after March 16, 2013, eighteen months after the date of enactment.

Section 6(f)(2)(B) of the Leahy-Smith America Invents Act provides that the Director may impose a limit on the number of post-grant reviews that may be instituted under chapter 32 of title 35, United States Code, during each of the first four one-year periods in which the amendments made by § 6(d) of the Leahy-Smith America Invents Act are in effect.

Section 6(f)(3) of the Leahy-Smith America Invents Act is entitled ''PENDING INTERFERENCES.'' Section 6(f)(3)(A) of the Leahy-Smith America Invents Act provides that the Director will determine, and include in the regulations issued under § 6(f)(1) of the Leahy-Smith America Invents Act, the procedures under which an interference commenced before the effective date set forth in § 6(f)(2)(A) of the Leahy-Smith America Invents Act is to proceed, including whether such interference: (i) is to be dismissed without prejudice to the filing of a petition for a post-grant review under chapter 32 of title 35, United States Code; or (ii) is to proceed as if the Leahy-Smith America Invents Act had not been enacted.

Section 6(f)(3)(B) of the Leahy-Smith America Invents Act provides that, for purposes of an interference that is commenced before the effective date set forth in § 6(f)(2)(A) of the Leahy-Smith America Invents Act, the Director may deem the Patent Trial and Appeal Board to be the Board of Patent Appeals and Interferences, and may allow the Patent Trial and Appeal Board to conduct any further proceedings in that interference.

Section 6(f)(3)(C) of the Leahy-Smith America Invents Act provides that the authorization to appeal or have remedy from derivation proceedings in §§ 141(d) and 146 of title 35, United States Code, as amended, and the jurisdiction to entertain appeals from derivation proceedings in 28 U.S.C. 1295(a)(4)(A), as amended, will be deemed to extend to any final decision in an interference that is commenced before the effective date set forth in § 6(f)(2)(A) of the Leahy-Smith America Invents Act and that is not dismissed pursuant to this paragraph.

Discussion of Specific Rules

The proposed new rules would implement the provisions of the Leahy-Smith America Invents Act for instituting and conducting post-grant review proceedings before the Patent Trial and Appeal Board (Board). 35 U.S.C. 326(a)(4), as added by the Leahy-Smith America Invents Act, provides that the Director will prescribe regulations establishing and governing post-grant review and the relationship of the review to other proceedings under title 35 of the United States Code. Public Law 112–29, § 6(d), 125 Stat. 284, 308 (2011). In particular, this notice proposes to add a new subpart C to 37 CFR part 42 to provide rules specific to post-grant reviews.

Additionally, the Office in a separate rulemaking is proposing to add part 42,

including subpart A, (RIN 0651–AC70) that will include a consolidated set of rules relating to Board trial practice. Specifically, the proposed subpart A of part 42 would set forth the policies, practices, and definitions common to all trial proceedings before the Board. The proposed rules in the instant notice and discussion below may reference the proposed rules in subpart A of part 42. Furthermore, the Office in separate rulemakings is proposing to add a new subpart B to 37 CFR part 42 (RIN 0651–AC71) to provide rules specific to *inter partes* reviews, a new subpart D to 37 CFR part 42 (RIN 0651–AC73; RIN 0651–AC75) to provide rules specific to the transitional program for covered business method patents, and a new subpart E to 37 CFR part 42 (RIN 0651–AC74) to provide rules specific to derivation proceedings.

Title 37 of the Code of Federal Regulations, Chapter I, Part 42, Subpart C, entitled ''Post-Grant Review'' is proposed to be added as follows:

Section 42.200: Proposed § 42.200 would set forth policy considerations for post-grant review proceedings.

Proposed § 42.200(a) would provide that a post-grant review is a trial and subject to the rules set forth in subpart A.

Proposed § 42.200(b) would provide that a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification in which it appears. This proposed rule would be consistent with longstanding established principles of claim construction before the Office. *In re Am. Acad. of Sci. Tech Ctr.,* 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Yamamoto,* 740 F.2d 1569, 1571 (Fed. Cir. 1984). As explained in *Yamamoto,* a party's ability to amend claims to avoid prior art distinguishes Office proceedings from district court proceedings and justifies the difficult standard for claim interpretation. *Yamamoto,* 740 F.2d at 1572.

Proposed § 42.200(c) would provide a one-year timeframe for administering the proceeding after institution, with up to a six-month extension for good cause. This proposed rule is consistent with 35 U.S.C. 326(a)(11), which sets forth statutory time frames for post-grant review.

Proposed § 42.200(d) would provide that interferences commenced within one year of enactment of the Leahy-Smith America Invents Act shall proceed under part 41 of 37 CFR except as the Chief Administrative Patent Judge may otherwise order in the interests of justice. The expectation is that dismissal will be rarely, if ever, ordered. Hence, any case where such an order arises would be exceptional and should be handled as its circumstances require. This proposed rule is consistent with § 6(f)(3) of the Leahy-Smith America Invents Act, which provides that the Director shall include in regulations the procedures under which an interference commenced before the effective date of the act is to proceed.

Section 42.201: Proposed § 42.201 would provide who may file a petition for post-grant review.

Proposed § 42.201(a) would provide that a person who is not the patent owner may file a petition to institute a post-grant review, unless the petitioner or real party in interest had already filed a civil action challenging the validity of a claim of the patent. The proposed rule would follow the statutory language of 35 U.S.C. 325(a)(1), which provides that post-grant reviews are barred by prior civil action.

Proposed § 42.201(b) would provide that a petition may not be filed where the petitioner, the petitioner's real party in interest, or a privy of the petitioner is estopped from challenging the claims on the grounds identified in the petition. The proposed rule is consistent with 35 U.S.C. 325(e)(1) and 315(e)(1), as amended, which provide for estoppel based upon a final written decision in a post-grant review, a covered business method review, or *inter partes* review.

Section 42.202: Proposed § 42.202 would set forth the timeliness requirement for filing a post-grant review petition.

Proposed § 42.202(a) would provide that a petition for a post-grant review of a patent must be filed no later than the date that is nine months after the date of the grant of a patent or of the issuance of a reissue patent. Proposed § 42.202(a) would also provide that a petition may not request a post-grant review for a claim in a reissue patent that is identical to or narrower than a claim in the original patent from which the reissue patent was issued unless the petition is filed not later than the date that is nine months after the date of the grant of the original patent. The proposed rule would be consistent with the requirements of 35 U.S.C. 321(c).

Proposed § 42.202(b) would provide that the Director may limit the number of post-grant reviews that may be instituted during each of the first four 1-year periods after post-grant review takes effect. This proposed rule is consistent with § 6(f)(2)(B) of the Leahy-Smith America Invents Act (Pub. L. 112–29, 125 Stat. 284, 311 (2011)), which provides for graduated implementation of post-grant reviews. The Office, however, does not expect to limit the number of petitions at this time.

Section 42.203: Proposed § 42.203 would provide that a fee must accompany a petition for post-grant review and that no filing date will be accorded until full payment is received. This proposed rule is consistent with 35 U.S.C. 322(a)(1), which provides that a petition may only be considered if the petition is accompanied by the payment of the fee established by the Director.

Section 42.204: Proposed § 42.204 would provide for the content of petitions to institute a post-grant review. The proposed rule is consistent with 35 U.S.C. 322(a)(4), which allows the Director to prescribe regulations concerning the information provided with the petition.

Proposed § 42.204(a) would provide that a petition must demonstrate that the petitioner has standing. To establish standing, a petitioner, at a minimum, must certify that the patent is available for post-grant review and that the petitioner is not barred or estopped from requesting a post-grant review. This proposed requirement attempts to ensure that a party has standing to file the post-grant review and would help prevent spuriously-instituted post-grant reviews. Facially, improper standing is a basis for denying the petition without proceeding to the merits of the petition.

Proposed § 42.204(b) would require that the petition identify the precise relief requested for the claims challenged. Specifically, the proposed rule would require that the petition identify each claim being challenged, the specific grounds on which each claim is challenged, how the claims are to be construed, how the claims as construed are unpatentable, why the claims as construed are unpatentable under the identified grounds, and the exhibit numbers of the evidence relied upon with a citation to the portion of the evidence that is relied upon to support the challenge. This proposed rule is consistent with 35 U.S.C. 322(a)(3), which requires that the petition identify, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence supporting the challenge. It is also consistent with 35 U.S.C. 322(a)(4), which allows the Director to require additional information as part of the petition. The proposed rule would provide an efficient means for identifying the legal and factual basis satisfying the threshold for instituting a proceeding and would provide the patent owner with a minimum level of notice as to the basis for the challenge to the claims.

Proposed § 42.204(c) would provide that a petitioner seeking to correct clerical or typographical mistakes in a petition could file a procedural motion to correct the mistakes. The proposed rule would also provide that the grant of such a motion would not alter the filing date of the petition.

Section 42.205: Proposed § 42.205 would provide petition and exhibit service requirements in addition to the service requirements of § 42.6.

Proposed § 42.205(a) would require the petitioner to serve the patent owner at the correspondence address of record for the patent, and permits service at any other address known to the petitioner as likely to effect service as well. Once a patent has issued, communications between the Office and the patent owner often suffer. *Ray* v. *Lehman,* 55 F.3d 606 (Fed. Cir. 1995) (patentee's failure to maintain correspondence address contributed to failure to pay maintenance fee and therefore expiration of the patent). While the proposed rule requires service at the correspondence address of record in the patent, the petitioner will already be in communication with the patent owner, in many cases, at a better service address than the official correspondence address.

Proposed § 42.205(b) would address the situation where service to a patent's correspondence address does not result in actual service on the patent owner. When the petitioner becomes aware of a service problem, it must promptly advise the Board of the problem. The petitioner may be required to certify that it is not aware of any better address for service of the patent owner. The Board may authorize other forms of service, such as service by publication in the Official Gazette of the United States Patent and Trademark Office.

Section 42.206: Proposed § 42.206 would provide for the filing date requirements of a post-grant review petition.

Proposed § 42.206(a) would set forth the requirements for a complete petition. 35 U.S.C. 322 states that a petition may only be considered when the petition identifies all the real parties in interest, when a copy of the petition is provided to the patent owner or the owner's representative, and that the petition be accompanied by the fee established by the Director. Consistent with the statute, the proposed rule would require that a complete petition be filed along with the fee and that it be served upon the patent owner.

Proposed § 42.206(b) would provide one month to correct defective requests to institute a post-grant review, unless the statutory deadline in which to file a petition for post-grant review has expired. The proposed rule is consistent with the requirement of 35 U.S.C. 322 that the Board may not consider a petition that fails to meet the statutory requirements for a petition. In determining whether to grant a filing date, the Board would review a petition for procedural compliance. Where a procedural defect is noted, *e.g.,* failure to state the claims being challenged, the Board would notify the petitioner that the petition was incomplete and identify any non-compliance issues.

Section 42.207: Proposed § 42.207(a) would provide that the patent owner may file a preliminary response to the petition. The rule is consistent with 35 U.S.C. 323, which provides for such a response.

Proposed § 42.207(b) would provide that the due date for the preliminary response to petition is no later than two months from the date of the notice that the request to institute a post-grant review has been granted a filing date. This proposed rule is consistent with 35 U.S.C. 323, which provides that the Director shall set a time period for filing the preliminary patent owner response.

Within three months from the filing of the preliminary patent owner response, or three months from the date such a response was due, the Board would determine whether to institute the review. A patent owner seeking a shortened period for the determination may wish to file a preliminary response well before the date the response is due, including filing a paper stating that no preliminary response will be filed. No adverse inference will be drawn where a patent owner elects not to file a response or elects to waive the response.

Proposed § 42.207(c) would provide that the preliminary patent owner response would not be allowed to present new testimony evidence, for example, expert witness testimony on patentability. 35 U.S.C. 323 provides that a preliminary patent owner response set forth reasons why no post-grant review should be instituted. In contrast, 35 U.S.C. 326(a)(8) provides for a patent owner response after institution and requires the presentation, through affidavits or declarations, of any additional factual evidence and expert opinions on which the patent owner relies in support of the response. The difference in statutory language demonstrates that 35 U.S.C. 323 does not permit for the presentation of evidence as a matter of right in the form of testimony in support of a preliminary patent owner response, and the proposed rule reflects this distinction. In certain instances, however, a patent owner may be granted additional discovery before filing their preliminary response and submit any testimonial evidence obtained through the discovery. For example, additional discovery may be authorized where patent owner raises sufficient concerns regarding the petitioner's certification of standing.

Although 35 U.S.C. 324 does not require that a preliminary patent owner response be considered, the Board expects to consider such a response in all but exceptional cases.

Proposed § 42.207(d) would provide that the preliminary patent owner response would not be allowed to include any amendment. *See* proposed § 42.221 for filing a motion to amend the patent after a post-grant review has been instituted.

Proposed § 42.207(e) would provide that the patent owner may file a statutory disclaimer under 35 U.S.C. 253(a) in compliance with § 1.321(a), disclaiming one or more claims in the patent, and no post-grant review will be instituted based on disclaimed claims.

Section 42.208: Proposed § 42.208 would provide for the institution of a post-grant review.

35 U.S.C. 324(a), as amended, states that the Director may not authorize a post-grant review to be instituted, unless the Director determines that the information in the petition, if such information is not rebutted, demonstrate that it is more likely than not at least one of the claims challenged in the petition is unpatentable. Alternatively, the Director may institute a post-grant review by a showing that the petition raises a novel or unsettled legal question that is important to other patents or patent applications. Proposed § 42.208 is consistent with this statutory requirement and identifies how the Board may authorize such a review to proceed.

Proposed § 42.208(a) would provide that the Board may authorize the review to proceed on all or some of the challenged claims and on all or some of the grounds of unpatentability asserted for each claim. Specifically, in instituting the review, the Board would authorize the review to proceed on the challenged claims for which the threshold requirements for the proceeding have been met. The Board would identify which of the grounds the review will proceed upon on a claim-by-claim basis. Any claim or issue not included in the authorization for review would not be part of the post-grant review. The Office intends to publish a notice of the institution of a post-grant review in the Official Gazette.

Proposed § 42.208(b) would provide that the Board, prior to institution of a

review, may deny some or all grounds for unpatentability on some or all of the challenged claims. This proposed rule is consistent with the efficient administration of the Office, which is a consideration in prescribing post-grant review regulations under 35 U.S.C. 326(b).

Proposed § 42.208(c) would provide that the institution may be based on a more likely than not standard and is consistent with the requirements of 35 U.S.C. 324(a).

Proposed § 42.208(d) would provide that a determination under § 42.208(c) may be satisfied by a showing that the petition raises a novel or unsettled legal question that is important to other patents or patent applications. This proposed rule is consistent with 35 U.S.C. 324(b). The expectation is that this ground for a post-grant review would be used sparingly.

Section 42.220: Proposed § 42.220 would set forth the procedure in which the patent owner may file a patent owner response.

Proposed § 42.220(a) would provide for a patent owner response and is consistent with the requirements of 35 U.S.C. 326(a)(8).

Proposed § 42.220(b) would provide that if no time for filing a patent owner response to a petition is provided in a Board order, the default time for filing the response would be two months from the date the post-grant review is instituted. The Board's experience with patent owner responses is that two months provides a sufficient amount of time to respond in a typical case, especially as the patent owner would already have been provided two months to file a preliminary patent owner response prior to institution. Additionally, the proposed time for response is consistent with the requirement that the trial be conducted such that the Board renders a final decision within one year of the institution of the review. 35 U.S.C. 326(a)(11).

Section 42.221: Proposed § 42.221 would provide a procedure for a patent owner to file motions to amend the patent.

Proposed § 42.221(a) would make it clear that the first motion to amend need not be authorized by the Board. If the motion complies with the timing and procedural requirements, the motion would be entered. Additional motions to amend would require prior Board authorization. All motions to amend, even if entered, will not automatically result in entry of the proposed amendment into the patent.

The requirement to consult the Board reflects the Board's need to regulate the substitution of claims and the amendment of the patent to control unnecessary proliferation of issues and abuses. The proposed rule aids in the efficient administration of the Office and the timely completion of the review. 35 U.S.C. 326(b).

Proposed § 42.221(b) would provide that a motion to amend the claims must set forth: (1) The support in the original disclosure of the patent for each claim that is added or amended, and (2) the support in an earlier filed disclosure for each claim for which benefit of the filing date of the earlier filed disclosure is sought.

Proposed § 42.221(c) would provide that a motion to amend the claims will not be authorized where the amendment does not respond to the ground of unpatentability involved in the trial or seeks to enlarge the scope of the claims or introduce new matter.

The proposed rule aids the efficient administration of the Office and the timely completion of the review, 35 U.S.C. 326(b), and is also consistent with 35 U.S.C. 326(d)(3), which prohibits enlarging the scope of claims or introducing new matter.

Under the proposed rules, a patent owner may request filing more than one motion to amend its claims during the course of the proceeding. Additional motions to amend may be permitted upon a demonstration of good cause by the patent owner. In considering whether good cause is shown, the Board will take into account how the filing of such motions would impact the timely completion of the proceeding and the additional burden placed on the petitioner. Specifically, belated motions to amend may cause the integrity and efficiency of the review to suffer as the petitioner may be required to devote significant time and resources on claims that are of constantly changing scope. Furthermore, due to time constraints, motions to amend late in the process may not provide a petitioner a full and fair opportunity to respond to the newly presented subject matter. Accordingly, the longer a patent owner waits to request authorization to file an additional motion to amend, the higher the likelihood the request will be denied. Similarly, motion to amend may be permitted upon a joint request of the petitioner and the patent owner to advance settlement where the motion does not jeopardize the ability of the Office to timely complete the proceeding.

Section 42.222: Proposed § 42.222 would prescribe a rule consistent with the requirements of 35 U.S.C. 325(d) regarding multiple proceedings involving the subject patent. When there is a question of a stay concerning a matter for which a statutory time period is running in one of the proceedings, where the stay would impact the ability of the Office to meet the statutory deadline, it is expected that the Director would be consulted prior to issuance of a stay, given that the stay would impact the ability of the Office to meet the statutory deadline for completing the post-grant review. For example, it is expected that the Board would consult the Director prior to the issuance of a stay in an *ex parte* reexamination proceeding where the three month statutory time period under 35 U.S.C. 303 is running.

Section 42.223: Proposed § 42.223 would provide for the filing of supplemental information. 35 U.S.C. 326(a)(3) provides that the Director shall establish regulations establishing procedures for filing supplemental information after the petition is filed. 35 U.S.C. 324(a) provides that the institution of a post-grant review is based upon the information filed in the petition under 35 U.S.C. 321 and any response filed under 35 U.S.C. 323. As the institution of the post-grant review is not based upon supplemental information, the proposed rule would provide that motions identifying supplemental information be filed after the institution of the post-grant review.

Section 42.224: Proposed § 42.224 would provide that additional discovery in a post-grant review is limited to evidence directly related to factual assertions advanced by a party to the proceeding and that the standard for additional discovery is good cause. The proposed rule is consistent with 35 U.S.C. 326(a)(5), which provides that the Director shall prescribe regulations setting forth the standards and procedures for discovery of relevant evidence that is directly related to factual assertions by either party.

While an interests-of-justice standard will be employed in granting additional discovery in *inter partes* reviews and derivation proceedings, new subpart C will provide that a good cause standard is employed in post-grant reviews, and by consequence, in covered business method patent reviews. Good cause and interests of justice are closely related standards, but on balance, the interests-of-justice standard is slightly higher than good cause. While a good cause standard requires a party to show a specific factual reason to justify the needed discovery, interests of justice would mean that the Board would look at all relevant factors. The interests-of-justice standard covers considerable more ground than the good cause standard, and in using such a standard

the Board will attempt to consider whether the additional discovery is necessary in light of ''the totality of the relevant circumstances.'' *U.S.* v. *Roberts,* 978 F.2d 17, 22 (1st Cir. 1992).

Rulemaking Considerations

A. Administrative Procedure Act (APA): This notice proposes rules of practice concerning the procedure for requesting a post-grant or covered business method patent review, and the trial process after initiation of such a review. The changes being proposed in this notice do not change the substantive criteria of patentability. These proposed changes involve rules of agency practice and procedure and/or interpretive rules. *See Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these changes and the Initial Regulatory Flexibility Act analysis, below, for comment as it seeks the benefit of the public's views on the Office's proposed implementation of these provisions of the Leahy-Smith America Invents Act.

B. Regulatory Flexibility Act: The Office estimates that 50 petitions for post-grant and covered business method patent review will be filed in fiscal year 2013. This will be the first fiscal year in which the review proceeding will be available for an entire fiscal year.

In fiscal year 2013, it is expected that no post-grant review petitions will be received, other than those filed under the transitional program for covered business method patents. Thus, the estimated number of post-grant and covered business method patent review petitions is based on the number of *inter partes* reexamination requests filed in fiscal year 2011 for patents having an original classification in class 705 of the United States Patent Classification System. Class 705 is the classification for patents directed to data processing in the following areas: financial, business practice, management, or cost/price determination. *See http://www.uspto.gov/web/patents/classification/uspc705/sched705.pdf.*

The following is the class definition and description for Class 705:

This is the generic class for apparatus and corresponding methods for performing *data processing* operations, in which there is a significant change in the data or for performing *calculation operations* wherein the apparatus or method is uniquely designed for or utilized in the *practice,* administration, or management of an *enterprise,* or in the processing of financial data.

This class also provides for apparatus and corresponding methods for performing *data processing* or *calculating operations* in which a charge for goods or services is determined.

This class additionally provides for subject matter described in the two paragraphs above in combination with cryptographic apparatus or method.

Subclasses 705/300–348 were established prior to complete reclassification of all project documents. Documents that have not yet been reclassified have been placed in 705/1.1. Until reclassification is finished a complete search of 705/300–348 should include a search of 705/1.1. Once the project documents in 705/1.1 have been reclassified they will be moved to the appropriate subclasses and this note will be removed.

SCOPE OF THE CLASS

1. The *arrangements* in this class are generally used for problems relating to administration of an organization, commodities or financial transactions.

2. Mere designation of an arrangement as a ''business machine'' or a document as a ''business form'' or ''business chart'' without any particular business function will not cause classification in this class or its subclasses.

3. For classification herein, there must be significant claim recitation of the data processing system or calculating computer and only nominal claim recitation of any external art environment. Significantly claimed apparatus external to this class, claimed in combination with apparatus under the class definition, which perform data processing or calculation operations are classified in the class appropriate to the external device unless specifically excluded therefrom.

4. Nominally claimed apparatus external to this class in combination with apparatus under the class definition is classified in this class unless provided for in the appropriate external class.

5. In view of the nature of the subject matter included herein, consideration of the classification schedule for the diverse art or environment is necessary for proper search.

See Classification Definitions (Feb. 2011) available at *http://www.uspto.gov/web/patents/classification/uspc705/defs705.htm.*

Accordingly, patents subject to covered business method patent review are anticipated to be typically classifiable in Class 705. It is anticipated that the number of patents in Class 705 that do not qualify as covered business method patents would approximate the number of patents classified in other classes that do qualify.

The Office received 20 requests for *inter partes* reexamination of patents classified in Class 705 in fiscal year 2011. The Office is estimating the number of petitions for covered business method patent review to be higher than 20 requests due to an expansion of the grounds for which review may be requested including subject matter eligibility grounds, the greater coordination with litigation, and the provision that patents will be eligible for the proceeding regardless of filing date of the application which resulted in the patent. It is not anticipated that any post-grant review petitions will be received in fiscal year 2013 as only patents issuing based on certain applications filed on or after March 16, 2013 are eligible for post-grant review, or certain applications involved in an interference proceeding commenced before September 12, 2012. Public Law 112–29, § 6(f), 125 Stat. 284, 311 (2011).

The Office has reviewed the entity status of patents for which *inter partes* reexamination was requested from October 1, 2000, to September 23, 2011. This data only includes filings granted a filing date in the particular year rather than filings in which a request was received in the year. The first *inter partes* reexamination was filed on July 27, 2001. A summary of that review is provided in Table 1 below. As shown by Table 1, patents known to be owned by a small entity represented 32.79% of patents for which *inter partes* reexamination was requested. Based on an assumption that the same percentage of patents owned by small entities will be subject to post-grant and covered business method patent review, it is estimated that 16 petitions for post-grant and covered business method patent review would be filed to seek review of patents owned by a small entity in fiscal year 2013, the first full fiscal year that these proceedings will be available.

TABLE 1—INTER PARTES REEXAMINATION REQUESTS FILED WITH PARENT ENTITY TYPE *

Fiscal year	*Inter partes* reexamination requests filed	Number filed where parent patent is small entity type	Percent small entity type of total
2011	329	123	37.39
2010	255	94	36.86
2009	240	62	25.83
2008	155	52	33.55
2007	127	35	27.56
2006	61	17	27.87
2005	59	18	30.51
2004	26	5	19.23
2003	21	12	57.14
2002	4	1	25.00
2001	1	0	0.00
	1,278	419	32.79

* Small entity status determined by reviewing preexamination small entity indicator for the parent patent.

Based on the number of patents issued during fiscal years 1995 through 1999 that paid the small entity third stage maintenance fee, the number of patents issued during fiscal years 2000 through 2003 that paid the small entity second stage maintenance fee, the number of patents issued during fiscal years 2004 through 2007 that paid the first stage maintenance fee, and the number of patents issued during fiscal years 2008 through 2011 that paid a small entity issue fee, there are no less than 375,000 patents owned by small entities in force as of October 1, 2011.

Furthermore, the Office recognizes that there would be an offset to this number for patents that expire earlier than 20 years from their filing date due to a benefit claim to an earlier application or due to a filing of a terminal disclaimer. The Office likewise recognizes that there would be an offset in the estimate in the opposite manner due to the accrual of patent term extension and adjustment. The Office, however, does not maintain data on the date of expiration by operation of a terminal disclaimer. Therefore, the Office has not adjusted the estimate of 375,000 patents owned by small entities in force as of October 1, 2011. While the Office maintains information regarding patent term extension and adjustment accrued by each patent, the Office does not collect data on the expiration date of patents that are subject to a terminal disclaimer. As such, the Office has not adjusted the estimated of 375,000 patents owned by small entities in force as of October 1, 2011, for accrual of patent term extension and adjustment, because in view of the incomplete terminal disclaimer data issue, would be incomplete and any estimate adjustment would be administratively burdensome. Thus, it is estimated that the number of small entity patents in force in fiscal year 2013 will be at least 375,000.

Based on the estimated number of patents in force, the number of small entity owned patents impacted by post-grant and covered business method patent review in fiscal year 2013 (16 patents) would be less than 0.005% (16/375,000) of all patents in force that are owned by small entities. The USPTO nonetheless has undertaken an Initial Regulatory Flexibility Act Analysis of the proposed rule.

1. Description of the Reasons That Action by the Office Is Being Considered: On September 16, 2011, the Leahy-Smith America Invents Act was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)). Section 6 of the Leahy-Smith America Invents Act amends title 35, United States Code, by adding chapter 32 to create a new post-grant review proceeding. Section 18 of the Leahy-Smith America Invents Act provides for a transitional program for covered business method patents which will employ the standards and procedures of the post-grant review proceeding with a few exceptions. For the implementation, § 6(f) of the Leahy-Smith America Invents Act requires that the Director issue regulations to carry out chapter 32 of title 35, United States Code, within one year after the date of enactment. Public Law 112–29, § 6(f), 125 Stat. 284, 311 (2011).

2. *Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rules:* The proposed rules seek to implement post-grant and covered business method patent review as authorized by the Leahy-Smith America Invents Act. The Leahy-Smith America Invents Act requires that the Director prescribe rules for the post-grant and covered business method patent reviews that result in a final determination not later than one year after the date on which the Director notices the institution of a proceeding. The one-year period may be extended for not more than 6 months if good cause is shown. *See* 35 U.S.C. 326(a)(11). The Leahy-Smith America Invents Act also requires that the Director, in prescribing rules for post-grant and covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings. *See* 35 U.S.C. 326(b). Consistent with the time periods provided in 35 U.S.C. 326(a)(11), the proposed rules are designed to, except where good cause is shown to exist, result in a final determination by the Patent Trial and Appeal Board within one year of the notice of initiation of the review. This one-year review will enhance the effect on the economy, and improve the integrity of the patent system and the efficient administration of the Office.

3. Description and Estimate of the Number of Affected Small Entities: The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the Regulatory Flexibility Act, and after consultation

with the Small Business Administration, the Office formally adopted an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR 67109 (Nov. 20, 2006), 1313 *Off. Gaz. Pat. Office* 60 (Dec. 12, 2006). This alternate small business size standard is SBA's previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. *See* 13 CFR 121.802. If patent applicants identify themselves on a patent application as qualifying for reduced patent fees, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Unlike the SBA small business size standards set forth in 13 CFR 121.201, the size standard for USPTO is not industry-specific. The Office's definition of a small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 67112 (Nov 20, 2006), 1313 *Off. Gaz. Pat. Office* at 63 (Dec. 12, 2006).

As discussed above, it is anticipated that 50 petitions for post-grant and covered business method patent review will be filed in fiscal year 2013. The Office has reviewed the percentage of patents for which *inter partes* reexamination was requested from October 1, 2000 to September 23, 2011. A summary of that review is provided in Table 1 above. As demonstrated by Table 1, patents known to be owned by a small entity represent 32.79% of patents for which *inter partes* reexamination was requested. Based on an assumption that the same percentage of patents owned by small entities will be subject to the new review proceedings, it is estimated that 16 patents owned by small entities would be affected by a post-grant or covered business method patent review.

The USPTO estimates that 2.5% of patent owners will file a request for adverse judgment prior to a decision to institute and that another 2.5% will file a request for adverse judgment or fail to participate after initiation. Specifically, an estimated 2 patent owners will file a request for adverse judgment or fail to participate after institution in post-grant and covered business method patent review proceedings combined. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%) from October 1, 2000 to September 23, 2011, it is estimated that 1 small entity will file such requests or fail to participate in post-grant and covered business method patent review combined.

Under the proposed rules, prior to determining whether to institute a review, the patent owner may file an optional patent owner preliminary response to the petition. Given the new time period requirements to file a petition for review before the Board relative to patent enforcement proceedings and the desire to avoid the cost of a trial and delays to related infringement actions, it is anticipated that 90% of petitions, other than those for which a request for adverse judgment is filed, will result in the filing of a patent owner preliminary response. Specifically, the Office estimates that 45 patent owners will file a preliminary response to a post-grant or covered business method petition. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 15 small entities will file a preliminary response to a post-grant or covered business method patent review petition filed in fiscal year 2013.

Under the proposed rules, the Office will determine whether to institute a trial within three months after the earlier of: (1) The submission of a patent owner preliminary response, (2) the waiver of filing a patent owner preliminary response, or (3) the expiration of the time period for filing a patent owner preliminary response. If the Office decides not to institute a trial, the petitioner may file a request for reconsideration of the Office's decision. In estimating the number of requests for reconsideration, the Office considered the percentage of *inter partes* reexaminations that were denied relative to those that were ordered (24 divided by 342, or 7%) in fiscal year 2011. *See* Reexamination—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.* The Office also considered the impact of: (1) Patent owner preliminary responses under newly authorized in 35 U.S.C. 323, (2) the enhanced thresholds for instituting reviews set forth in 35 U.S.C. 324(a), which would tend to increase the likelihood of dismissing a petition for review, and (3) the more restrictive time period for filing a petition for review in 35 U.S.C. 325(b), which would tend to reduce the likelihood of dismissing a petition. Based on these considerations, it is estimated that 10% of the petitions for review (5 divided by 49) would be dismissed.

During fiscal year 2011, the Office issued 21 decisions following a request for reconsideration of a decision on appeal in *inter partes* reexamination. The average time from original decision to decision on reconsideration was 4.4 months. Thus, the decisions on reconsideration were based on original decisions issued from July 2010 until June 2011. During this time period, the Office mailed 63 decisions on appeals in *inter partes* reexamination. *See* BPAI Statistics—Receipts and Dispositions by Technology Center, *http://www.uspto.gov/ip/boards/bpai/stats/receipts/index.jsp (monthly data).* Based on the assumption that the same rate of reconsideration (21 divided by 63 or 33.333%) will occur, the Office estimates that 2 requests for reconsideration will be filed. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 1 small entity will file a request for a reconsideration of a decision dismissing the petition for post-grant and covered business method patent review filed in fiscal year 2013.

The Office reviewed motions, oppositions, and replies in a number of contested trial proceedings before the trial section of the Board. The review included determining whether the motion, opposition, and reply were directed to patentability grounds and non-priority non-patentability grounds. Based on the review, it is anticipated that post-grant and covered business method patent reviews will have an average of 8.89 motions, oppositions, and replies per trial after institution. Settlement is estimated to occur in 20% of instituted trials at various points of the trial. In the trials that are settled, it is estimated that only 50% of the noted motions, oppositions, and replies would be filed.

After a trial has been instituted but prior to a final written decision, parties to a post-grant or covered business method patent review may request an oral hearing. It is anticipated that 45 requests for oral hearings will be filed based on the number of requests for oral hearings in *inter partes* reexamination, the stated desirability for oral hearings during the legislative process, and the public input received prior to this notice of proposed rulemaking. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 15 small entities will file a request for oral hearing in the post-grant or covered business method patent reviews instituted in fiscal year 2013.

Parties to a post-grant or covered business method patent review may file requests to treat a settlement as business confidential, and request for adverse judgment. A written request to make a settlement agreement available may also be filed. Given the short time period set for conducting trials, it is anticipated that the alternative dispute resolution options will be infrequently used. The Office estimates that 2 requests to treat a settlement as business confidential, and 10 requests for adverse judgment, default adverse judgment, or settlement notices will be filed. The Office also estimates that 2 requests to make a settlement available will be filed. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 1 small entity will file a request to treat a settlement as business confidential and 3 small entities will file a request for adverse judgment, default adverse judgment notices, or settlement notices in the reviews instituted in fiscal year 2013.

Parties to a post-grant or covered business method patent review may seek judicial review of the final decision of the Board. Historically, 33% of examiner's decisions in *inter partes* reexamination proceedings have been appealed to the Board. It is anticipated that 16% of final decision of the Board would be appealed. The reduction in appeal rate is based the higher threshold for institution, the focused process, and the experience of the Board in conducted contested cases. Therefore, it is estimated that 5 parties would seek judicial review of the final decisions of the Board in post-grant or covered business method patent reviews instituted in fiscal year 2013. Furthermore, based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 2 small entities would seek judicial review of final decisions of the Board in the post-grant or covered business method patent reviews instituted in fiscal year 2013.

4. *Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record:* Based on the filing trends of *inter partes* reexamination requests, it is anticipated that petitions for post-grant review will be filed across all technologies with approximately 50% being filed in electrical technologies, approximately 30% in mechanical technologies, and the remaining 20% in chemical technologies and design. Under the proposed rules, a person who is not the owner of a patent may file a petition to institute a review of the patent, with a few exceptions. Given this, a petition for review is likely to be filed by an entity practicing in the same or similar field as the patent. Therefore, it is anticipated that 50% of the petitions for review will be filed in the electronic field, 30% in the mechanical field, and 20% in the chemical or design fields for post-grant review.

Covered business method patent reviews would be limited to business method patents that are not patents for technological inventions. Under the proposed rules, a person who is not the owner of a patent may file a petition to institute a review of the patent, with a few exceptions. Given this, it is anticipated that a petition for review is likely to be filed by an entity practicing in the business method field for covered business methods.

Preparation of the petition would require analyzing the patent claims, locating evidence supporting arguments of unpatentability, and preparing the petition seeking review of the patent. This notice provides the proposed procedural requirements that are common for the new trials. Additional requirements are provided in contemporaneous trial specific proposed rulemaking. The procedures for petitions to institute a post-grant review are proposed in §§ 42.5, 42.6, 42.8, 42.11, 42.13, 42.20, 42.21, 42.22, 42.24(a)(2)), 42.63, 42.65, and 42.201 through 42.205. The procedures for petitions to institute a covered business method patent review are proposed in §§ 42.5, 42.6, 42.8, 42.11, 42.13, 42.20, 42.21, 42.22, 42.24(a)(3), 42.63, 42.65, 42.203, 42.205, and 42.302 through 42.304.

The skills necessary to prepare a petition for review and to participate in a trial before the Patent Trial and Appeal Board would be similar to those needed to prepare a request for *inter partes* reexamination, to represent a party in an *inter partes* reexamination, and to represent a party in an interference proceeding before the Patent Trial and Appeal Board. The level of skill is typically possessed by a registered patent practitioner having devoted professional time to the particular practice area, typically under the supervision of a practitioner skilled in the particular practice area. Where authorized by the Board, a non-registered practitioner may be admitted *pro hac vice,* on a case-by-case basis based on the facts and circumstances of the trial and party, as well as the skill of the practitioner.

The cost of preparing a petition for post-grant or covered business method patent review is estimated to be 33.333% higher than the cost of preparing an *inter partes* review petition because the petition for post-grant or covered business method patent review may seek to institute a proceeding on additional grounds such as subject matter eligibility. The American Intellectual Property Law Association's *AIPLA Report of the Economic Survey 2011* reported that the average cost of preparing a request for *inter partes* reexamination was $46,000. Based on the work required to prepare and file such a request, the Office considers the reported cost as a reasonable estimate. Therefore, the Office estimates that the cost of preparing a petition for post-grant or covered business method patent review would be $61,333 (including expert costs).

The filing of a petition for review would also require payment by the petitioner of the appropriate petition fee to recover the aggregate cost for providing the review. The appropriate petition fee would be determined by the number of claims for which review is sought and the type of review. The proposed fees for filing a petition for post-grant or covered business method patent review would be: $35,800 to request review of 20 or fewer claims, $44,750 to request review of 21 to 30 claims, $53,700 to request review of 31 to 40 claims, $71,600 to request review of 41 to 50 claims, $89,500 to request review of 51 to 60 claims, and an additional $35,800 to request review of additional groups of 10 claims.

In setting fees, the estimated information technology cost to establish the process and maintain the filing and storage system through 2017 is to be recovered by charging each petition $2,270. The remainder of the fee is to recover the cost for judges to determine whether to institute a review and

conduct the review, together with a proportionate share of indirect costs, *e.g.,* rent, utilities, additional support, and administrative costs. Based on the direct and indirect costs, the fully burdened cost per hour for judges to decide a petition and conduct a review is estimated to be $258.32.

For a petition for post-grant or covered business method patent review with 20 or fewer challenged claims, it is anticipated that 121 hours of judge time would be required. For 21 to 30 challenged claims, an additional 30 hours is anticipated for a total of 151 hours of judge time. For 31 to 40 challenged claims, an additional 60 hours is anticipated for a total of 181 hours of judge time. For 41 to 50 challenged claims, an additional 121 hours is anticipated for a total of 242 hours of judge time. For 51 to 60 challenged claims, an additional 181 hours is anticipated for a total of 302 hours of judge time. The increase in adjustment reflects the added complexity that typically occurs as more claims are in dispute.

The proposed rules would permit the patent owner to file a preliminary response to the petition setting forth the reasons why no review should be initiated. The procedures for a patent owner to file a preliminary response as an opposition are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.107, 42.120, 42.207, and 42.220. The patent owner is not required to file a preliminary response. The Office estimates that the preparation and filing of a patent owner preliminary response would require 100 hours of professional time and cost $34,000 (including expert costs). The *AIPLA Report of the Economic Survey 2011* reported that the average cost for *inter partes* reexamination including of the request ($46,000), the first patent owner response, and third-party comments was $75,000 (*see* I–175) and the median billing rate for professional time of $340 per hour for attorneys in private firms (*see 8).* Thus, the cost of the first patent owner reply and the third party statement is $29,000. The Office finds these costs to be reasonable estimates. The patent owner reply and third party statement, however, occur after the examiner has made an initial threshold determination and made only the appropriate rejections. Accordingly, it is anticipated that filing a patent owner preliminary response to a petition for review would cost more than the initial reply in a reexamination, or an estimated $34,000 (including expert costs).

The Office will determine whether to institute a trial within three months after the earlier of: (1) The submission of a patent owner preliminary response, (2) the waiver of filing a patent owner preliminary response, or (3) the expiration of the time period for filing a patent owner preliminary response. If the Office decides not to institute a trial, the petitioner may file a request for reconsideration of the Office's decision. It is anticipated that a request for reconsideration will require 80 hours of professional time to prepare and file, for a cost of $27,200. This estimate is based on the complexity of the issues and desire to avoid time bars imposed by 35 U.S.C. 325(b).

Following institution of a trial, the parties may be authorized to file various motions, *e.g.,* motions to amend and motions for additional discovery. Where a motion is authorized, an opposition may be authorized, and where an opposition is authorized, a reply may be authorized. The procedures for filing a motion are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(5), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.221, and 42.223. The procedures for filing an opposition are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.207, and 42.220. The procedures for filing a reply are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(c), 42.51, 42.52, 42.53, 42.54, 42.63, and 42.65. As discussed previously, the Office estimates that the average post-grant or covered business method patent review will have 8.89 motions, oppositions, and replies after institution.

The *AIPLA Report of the Economic Survey 2011* reported that the average cost in contested cases before the trial section of the Board prior to the priority phase was $322,000 per party. Because of the overlap of issues in patentability grounds, it is expected that the cost per motion will decline as more motions are filed in a proceeding. It is estimated that a motion, opposition, or reply in a derivation would cost $34,000, which is estimated by dividing the total public cost for all motions in current contested cases divided by the estimated number of motions in derivations under 35 U.S.C. 135, as amended. The cost of a motion, opposition, or reply in a post-grant or covered business method patent review is estimated at $44,200 (including expert costs), reflecting the reduction in overlap between motions relative to derivation. Based on the work required to file and prepare such briefs, the Office considers the reported cost as a reasonable estimate.

After a trial has been instituted but prior to a final written decision, parties to a post-grant or covered business method patent review may request an oral hearing. The procedure for filing requests for oral argument is proposed in § 42.70. The *AIPLA Report of the Economic Survey 2011* reported that the third quartile cost of an *ex parte* appeal with an oral argument is $12,000, while the third quartile cost of an *ex parte* appeal without an oral argument is $6,000. In view of the reported costs, which the Office finds reasonable, and the increased complexity of an oral hearing with multiple parties, it is estimated that the cost per party for oral hearings would be $6,800 or $800 more than the reported third quartile cost for an *ex parte* oral hearing.

Parties to a post-grant or covered business method patent review may file requests to treat a settlement as business confidential, or file a request for adverse judgment. A written request to make a settlement agreement available may also be filed. The procedures to file requests that a settlement be treated as business confidential are proposed in § 42.74(c). The procedures to file requests for adverse judgment are proposed in § 42.73(b). The procedures to file requests to make a settlement agreement available are proposed in § 42.74(c)(2). It is anticipated that requests to treat a settlement as business confidential will require 2 hours of professional time or $680. It is anticipated that requests for adverse judgment will require 1 hour of professional time or $340. It is anticipated that requests to make a settlement agreement available will require 1 hour of professional time or $340. The requests to make a settlement agreement available will also require payment of a fee of $400 specified in proposed § 42.15(d).

Parties to a review proceeding may seek judicial review of the judgment of the Board. The procedures to file notices of judicial review of a Board decision, including notices of appeal and notices of election provided for in 35 U.S.C. 141, 142, 145, and 146, are proposed in §§ 90.1 through 90.3. The submission of a copy of a notice of appeal or a notice of election is anticipated to require 6 minutes of professional time at a cost of $34.

5. *Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Rules on Small Entities:*

Size of petitions and motions: The Office considered whether to apply a page limit and what an appropriate page

limit would be. The Office does not currently have a page limit on *inter partes* reexamination requests. The *inter partes* reexamination requests from October 1, 2010 to June 30, 2011, averaged 246 pages. Based on the experience of processing *inter partes* reexamination requests, the Office finds that the very large size of the requests has created a burden on the Office that hinders the efficiency and timeliness of processing the requests, and creates a burden on patent owners. The quarterly reported average processing time from the filing of a request to the publication of a reexamination certificate ranged from 28.9 months to 41.7 months in fiscal year 2009, from 29.5 months to 37.6 months in fiscal year 2010, and from 31.9 to 38.0 months in fiscal year 2011. *See* Reexaminations—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.*

By contrast, the Office has a page limit on the motions filed in contested cases, except where parties are specifically authorized to exceed the limitation. The typical contested case proceeding is subject to a standing order that sets a 50 page limit for motions and oppositions on priority, a 15 page limit for miscellaneous motions (§ 41.121(a)(3)) and oppositions (§ 41.122), and a 25 page limit for other motions (§ 41.121(a)(2)) and oppositions to other motions. In typical proceedings, replies are subject to a 15 page limit if directed to priority, a 5 page limit for miscellaneous issues, and 10 pages for other motions. The average contested case was terminated in 10.1 months in fiscal year 2009, in 12 months in fiscal year 2010, and 9 months in fiscal year 2011. The percentage of contested cases terminated within 2 years was 93.7% in fiscal year 2009, 88.0% in fiscal year 2010, and 94.0% in fiscal year 2011. *See* BPAI Statistics—Performance Measures, *http://www.uspto.gov/ip/boards/bpai/stats/perform/index.jsp.*

Comparing the average time period for terminating a contested case, 10.0 to 12.0 months, with the average time period, during fiscal years 2009 through 2011, for completing an *inter partes* reexamination, 28.9 to 41.7 months, indicates that the average interference takes from 24% (10.0/41.7) to 42% (12.0/28.9) of the time of the average *inter partes* reexamination. While several factors contribute to the reduction in time, limiting the size of the requests and motions is considered a significant factor. Proposed § 42.24 would provide page limits for petitions, motions, oppositions, and replies. 35 U.S.C. 326(b) provides considerations that are to be taken into account when prescribing regulations including the integrity of the patent system, the efficient administration of the Office, and the ability to complete timely the trials. The page limits proposed in these rules are consistent with these considerations.

Federal courts routinely use page limits in managing motions practice as ''[e]ffective writing is concise writing.'' *Spaziano* v. *Singletary,* 36 F.3d 1028, 1031 n.2 (11th Cir. 1994). Many district courts restrict the number of pages that may be filed in a motion including, for example, the District of Delaware, the District of New Jersey, the Eastern District of Texas, the Northern, Central, and Southern Districts of California, and the Eastern District of Virginia.

Federal courts have found that page limits ease the burden on both the parties and the courts, and patent cases are no exception. *Eolas Techs., Inc.* v. *Adobe Sys., Inc.,* No. 6:09–CV–446, at 1 (E.D. Tex. Sept. 2, 2010) (''The Local Rules' page limits ease the burden of motion practice on both the Court and the parties.''); *Blackboard, Inc.* v. *Desire2Learn, Inc.,* 521 F. Supp. 2d 575, 576 (E.D. Tex. 2007) (The parties ''seem to share the misconception, popular in some circles, that motion practice exists to require federal judges to shovel through steaming mounds of pleonastic arguments in Herculean effort to uncover a hidden gem of logic that will ineluctably compel a favorable ruling. Nothing could be farther from the truth.''); *Broadwater* v. *Heidtman Steel Prods., Inc.,* 182 F. Supp. 2d 705, 710 (S.D. Ill. 2002) (''Counsel are strongly advised, in the future, to not ask this Court for leave to file any memoranda (supporting or opposing dispositive motions) longer than 15 pages. The Court has handled complicated patent cases and employment discrimination cases in which the parties were able to limit their briefs supporting and opposing summary judgment to 10 or 15 pages.'' (Emphasis omitted)).

The Board's contested cases experience with page limits in motions practice is consistent with that of the federal courts. The Board's use of page limits has shown it to be beneficial without being unduly restrictive for the parties. Page limits have encouraged the parties to focus on dispositive issues, easing the burden of motions practice on the parties and on the Board.

The Board's contested cases experience with page limits is informed by its use of different approaches over the years. In the early 1990s, page limits were not routinely used for motions, and the practice suffered from lengthy and unacceptable delays. To reduce the burden on the parties and on the Board and thereby reduce the time to decision, the Board instituted page limits in the late 1990s for every motion. Page limit practice was found to be effective in reducing the burdens on the parties and improving decision times at the Board. In 2006, the Board revised the page limit practice and allowed unlimited findings of fact and generally limited the number of pages containing argument. Due to abuses of the system, the Board recently reverted back to page limits for the entire motion (both argument and findings of fact).

The Board's current page limits are consistent with the 25 page limits in the Northern, Central, and Southern Districts of California, and the Middle District of Florida and exceed the limits in the District of Delaware (20), the Northern District of Illinois (15), the District of Massachusetts (20), the Eastern District of Michigan (20), the Southern District of Florida (20), and the Southern District of Illinois (20).

In a typical proceeding before the Board, a party may be authorized to file a single motion for unpatentability based on prior art, a single motion for unpatentability based upon failure to comply with 35 U.S.C. 112, lack of written description, and/or enablement, and potentially another motion for lack of compliance with 35 U.S.C. 101, although a 35 U.S.C. 101 motion may be required to be combined with the 35 U.S.C. 112 motion. Each of these motions is currently limited to 25 pages in length, unless good cause is shown that the page limits are unduly restrictive for a particular motion.

A petition requesting the institution of a trial proceeding would be similar to motions currently filed with the Board. Specifically, petitions to institute a trial seek a final written decision that the challenged claims are unpatentable, where derivation is a form of unpatentability. Accordingly, a petition to institute a trial based on prior art would, under current practice, be limited to 25 pages, and by consequence, a petition raising unpatentability based on prior art and unpatentability under 35 U.S.C. 101 and/or 112 would be limited to 50 pages.

Under the proposed rules, a post-grant review petition would be based upon any grounds identified in 35 U.S.C. 321(b), *e.g.,* failure to comply with 35 U.S.C. 101, 102, 103, and 112 (except best mode). Under current practice, a party would be limited to filing two or three motions, each limited to 25 pages, for a maximum of 75 pages. Where there is more than one motion for unpatentability based upon different statutory grounds, the Board's

experience is that the motions contain similar discussions of technology and claim constructions. Such overlap is unnecessary where a single petition for unpatentability is filed. Thus, the proposed 70 page limit is considered sufficient in all but exceptional cases.

Covered business method patent review is similar in scope to that of post-grant review as there is substantial overlap in the statutory grounds permitted for review. Thus, the proposed page limit for proposed covered business method patent reviews is 70 pages, which is the same as that proposed for post-grant review.

The proposed rule would provide that petitions to institute a trial must comply with the stated page limits but may be accompanied by a motion that seeks to waive the page limits. The petitioner must show in the motion how a waiver of the page limits is in the interests of justice. A copy of the desired non-page limited petition must accompany the motion. Generally, the Board would decide the motion prior to deciding whether to institute the trial.

Current Board practice provides a limit of 25 pages for other motions and 15 pages for miscellaneous motions. The Board's experience is that such page limits are sufficient for the parties filing them and do not unduly burden the opposing party or the Board. Petitions to institute a trial would generally replace the current practice of filing motions for unpatentability, as most motions for relief are expected to be similar to the current interference miscellaneous motion practice. Accordingly, the proposed 15 page limit is considered sufficient for most motions but may be adjusted where the limit is determined to be unduly restrictive for the relief requested.

Proposed § 42.24(b) would provide page limits for oppositions filed in response to motions. Current contested cases practice provides an equal number of pages for an opposition as its corresponding motion. This is generally consistent with motions practice in federal courts. The proposed rule would continue the current practice.

Proposed § 42.24(c) would provide page limits for replies. Current contested cases practice provides a 15 page limit for priority motion replies, a 5 page limit for miscellaneous (procedural) motion replies, and a 10 page limit for all other motions. The proposed rule is consistent with current contested case practice for procedural motions. The proposed rule would provide a 15 page limit for reply to petitions requesting a trial, which the Office believes is sufficient based on current practice. Current contested cases practice has shown that such page limits do not unduly restrict the parties and, in fact, have provided sufficient flexibility to parties to not only reply to the motion but also help to focus on the issues. Thus, it is anticipated that default page limits would minimize the economic impact on small entities by focusing on the issues in the trials.

The Leahy-Smith America Invents Act requires that the Director, in prescribing rules for post-grant and covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings. *See* 35 U.S.C. 326(b). In view of the actual results of the duration of proceedings in *inter partes* reexamination (without page limits) and contested cases (with page limits), proposing procedures with reasonable page limits would be consistent with the objectives set forth in the Leahy-Smith America Invents Act. Based on our experience on the time needed to complete a non-page limited proceeding, the option of non-page limited proceedings was not adopted.

Fee Setting: 35 U.S.C. 321(a) requires the Director to establish fees to be paid by the person requesting the review in such amounts as the Director determines to be reasonable, considering the aggregate costs of the review. In contrast to current 35 U.S.C. 311(b) and 312(c), the Leahy-Smith America Invents Act requires the Director to establish more than one fee for reviews based on the total cost of performing the reviews, and does not provide for refund of any part of the fee when the Director determines that the review should not be initiated.

35 U.S.C. 322(a)(1) further requires that the fee established by the Director under 35 U.S.C. 321 accompany the petition on filing. Accordingly, in interpreting the fee setting authority in 35 U.S.C. 321(a), it is reasonable that the Director should set a number of fees for filing a petition based on the anticipated aggregate cost of conducting the review depending on the complexity of the review, and require payment of the fee upon filing of the petition.

Based on experience with contested cases and *inter partes* reexamination proceedings, the following characteristics of requests were considered as potential factors for fee setting as each would likely impact the cost of providing the new services. The Office also considered the relative difficulty in administrating each option in selecting the characteristics for which different fees should be paid for requesting review.

I. *Adopted Option.* Number of claims for which review is requested. The number of claims often impacts the complexity of the request and increases the demands placed on the deciding officials. *Cf. In re Katz Interactive Call Processing Patent Litig.,* 639 F.3d 1303, 1309 (Fed. Cir. 2011) (limiting number of asserted claims is appropriate to efficiently manage a case). Moreover, the number of claims for which review is requested can be easily determined and administered, which avoids delays in the Office and the impact on the economy or patent system that would occur if an otherwise meritorious request is refused due to improper fee payment. Any subsequent petition would be time barred in view 35 U.S.C. 325.

II. *Alternative Option I.* Number of grounds for which review is requested. The Office has experience with large numbers of cumulative grounds being presented in *inter partes* reexaminations, which often add little value to the proceedings. Allowing for a large number of grounds to be presented on payment of an additional fee(s) is not favored. Determination of the number of grounds in a request may be contentious and difficult and may result in a large amount of high-level petition work. As such, the option would have a negative impact on small entities. Moreover, interferences instituted in the 1980s and early 1990s suffered from this problem as there was no page limit for motions and the parties had little incentive to focus the issues for decision. The resulting interference records were often a collection of disparate issues and evidence. This led to lengthy and unwarranted delays in deciding interference cases as well as increased costs for parties and the Office. Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the post-grant and covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete the instituted proceedings.

III. *Alternative Option II.* Pages of argument. The Office has experience with large requests in *inter partes* reexamination in which the merits of the proceedings could have been resolved in a shorter request. Allowing for unnecessarily large requests on payment of an additional fee(s) is not favored. Moreover, determination of

what should be counted as ''argument'' as compared with ''evidence'' has often proven to be contentious and difficult as administered in the current *inter partes* reexamination appeal process.

In addition, the trial section of the Board recently experimented with motions having a fixed page limit for the argument section and an unlimited number of pages for the statement of facts. Unlimited pages for the statement of facts led to a dramatic increase in the number of alleged facts and pages associated with those facts. For example, one party used approximately 10 pages for a single ''fact'' that merely cut and pasted a portion of a declarant's cross-examination. Based upon the trial section's experience with unlimited pages of facts, the Board recently reverted back to a fixed page limit for the entire motion (argument and facts). Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the post-grant and covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

IV. *Alternative Option III.* The Office considered an alternative fee setting regime in which fees would be charged at various steps in the review process, a first fee on filing of the petition, a second fee if instituted, a third fee on filing a motion in opposition to amended claims, *etc.* The alternative fee setting regime would hamper the ability of the Office to complete timely reviews, would result in dismissal of pending proceedings with patentability in doubt due to non-payment of required fees by third parties, and would be inconsistent with 35 U.S.C. 322 that requires the fee established by the Director be paid at the time of filing the petition. Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for post-grant and covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

V. *Alternative Option IV.* The Office considered setting reduced fees for small and micro entities and to provide refunds if a review is not instituted. The Office may set the fee to recover the cost of providing the services under 35 U.S.C. 41(d)(2)(a). Fees set under this authority are not reduced for small entities, *see* 35 U.S.C. 42(h)(1), as amended. Moreover, the Office does not have authority to refund fees that were not paid by mistake or in excess of that owed. *See* 35 U.S.C. 42(d).

Discovery: The Office considered a procedure for discovery similar to the one available during district court litigation. Discovery of that scope has been criticized sharply, particularly when attorneys use discovery tools as tactical weapons, which hinder the ''just, speedy, and inexpensive determination of every action and proceedings.'' *See* Introduction to *An E-Discovery Model Order* available at *http://www.cafc.uscourts.gov/images/stories/announcements/Ediscovery_Model_Order.pdf*. Accordingly, this alternative would have been inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the post-grant and covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

Additional discovery increases trial costs and increases the expenditures of time by the parties and the Board. To promote effective discovery, the proposed rule would require a showing of good cause to authorize additional requested discovery. To show good cause, a party must make a particular and specific demonstration of fact. The moving party must also show that it was fully diligent in seeking discovery, and that there is no undue prejudice to the non-moving party.

The Office has proposed a default scheduling order to provide limited discovery as a matter of right and also the ability to seek additional discovery on a case-by-case basis. In weighing the need for additional discovery, should a request be made, the economic impact on the opposing party would be considered which would tend to limit additional discovery where a party is a small entity.

Pro Hac Vice: The Office considered whether to allow counsel to appear *pro hac vice.* In certain cases, highly skilled, but non-registered, attorneys have appeared satisfactorily before the Board in contested cases. The Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause. Proceedings before the Office can be technically complex. Consequently, the grant of a motion to appear *pro hac vice* is a discretionary action taking into account the specifics of the proceedings. Similarly, the revocation of *pro hac vice* is a discretionary action taking into account various factors, including incompetence, unwillingness to abide by the Office's Rules of Professional Conduct, prior findings of misconduct before the Office in other proceedings, and incivility.

The Board's past practice has required the filing of a motion by a registered patent practitioner seeking *pro hac vice* representation based upon a showing of: (1) How qualified the unregistered practitioner is to represent the party in the proceeding when measured against a registered practitioner, and, (2) whether the party has a genuine need to have the particular unregistered practitioner represent it during the proceeding. This practice has proven effective in the limited number of contested cases where such requests have been granted. The proposed rule, if adopted, would allow for this practice in the new proceedings authorized by the Leahy-Smith America Invents Act.

The proposed rules would provide a limited delegation to the Board under 35 U.S.C. 2(b)(2) and 32 to regulate the conduct of counsel in Board proceedings. The proposed rule would delegate to the Board the authority to conduct counsel disqualification proceedings while the Board has jurisdiction over a proceeding. The rule would also delegate to the Chief Administrative Patent Judge the authority to make final a decision to disqualify counsel in a proceeding before the Board for the purposes of judicial review. This delegation would not derogate from the Director the prerogative to make such decisions, nor would it prevent the Chief Administrative Patent Judge from further delegating authority to an administrative patent judge.

The Office considered broadly permitting practitioners not registered to practice by the Office to represent parties in trial as well as categorically prohibiting such practice. A prohibition on the practice would be inconsistent with the Board's experience, and more importantly, might result in increased costs particularly where a small entity has selected its district court litigation team for representation before the Board and has a patent review filed after litigation efforts have commenced. Alternatively, broadly making the practice available would create burdens on the Office in administering the trials and in completing the trial within the established timeframe, particularly if the selected practitioner does not have the requisite skill. In weighing the desirability of admitting a practitioner *pro hac vice,* the economic impact on the party in interest would be considered which would tend to

increase the likelihood that a small entity could be represented by a non-registered practitioner. Accordingly, the alternatives to eliminate *pro hac vice* practice or to permit it more broadly would have been inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the post-grant and covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

Threshold for Instituting a Review: The Office considered whether the threshold for instituting a review could be set as low as or lower than the threshold for *ex parte* reexamination. This alternative could not be adopted in view of the statutory requirements in 35 U.S.C. 324.

Default Electronic Filing: The Office considered a paper filing system and a mandatory electronic filing system (without any exceptions) as alternatives to the proposed requirement that all papers are to be electronically filed, unless otherwise authorized.

Based on the Office's experience, a paper based filing system increases delay in processing papers, delay in public availability, and the chance that a paper may be misplaced or made available to an improper party if confidential. Accordingly, the alternative of a paper based filing system would have been inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the post-grant and covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

An electronic filing system (without any exceptions) that is rigidly applied would result in unnecessary cost and burdens, particularly where a party lacks the ability to file electronically. By contrast, if the proposed option is adopted, it is expected that the entity size and sophistication would be considered in determining whether alternative filing methods would be authorized.

6. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rules:

37 CFR 1.99 provides for the submission of information after publication of a patent application during examination by third parties.

37 CFR 1.171–1.179 provide for applications to reissue a patent to correct errors, including where a claim in a patent is overly broad.

37 CFR 1.291 provides for the protest against the issuance of a patent during examination.

37 CFR 1.321 provides for the disclaimer of a claim by a patentee.

37 CFR 1.501 and 1.502 provide for *ex parte* reexamination of patents. Under these rules, a person may submit to the Office prior art consisting of patents or printed publications that are pertinent to the patentability of any claim of a patent, and request reexamination of any claim in the patent on the basis of the cited prior art patents or printed publications. Consistent with 35 U.S.C. 302–307, *ex parte* reexamination rules provide a different threshold for initiation, require the proceeding to be conducted by an examiner with a right of appeal to the Patent Trial and Appeal Board, and allow for limited participation by third parties.

37 CFR 1.902–1.997 provide for *inter partes* reexamination of patents. Similar to *ex parte* reexamination, *inter partes* reexamination provides a procedure in which a third party may request reexamination of any claim in a patent on the basis of the cited prior art patents and printed publication. The *inter partes* reexamination practice will be eliminated, except for requests filed before the effective date of September 16, 2012. *See* § 6(c)(3)(C) of the Leahy-Smith America Invents Act.

Other countries have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)). Nevertheless, the Office believes that there are no other duplicative or overlapping foreign rules.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

Based on the petition and other filing requirements for initiating a review proceeding, the USPTO estimates the burden of the proposed rules on the public to be $22,761,410 in fiscal year 2013 which represents the sum of the estimated total annual (hour) respondent cost burden ($20,405,610) plus the estimated total annual non-hour respondent cost burden ($2,355,800) provided in Part O, Section II, of this notice, *infra.*

The USPTO expect several benefits to flow from the Leahy-Smith America Invents Act and these proposed rules. It is anticipated that the proposed rules will reduce the time for reviewing patents at the USPTO. Specifically, 35 U.S.C. 326(a) provides that the Director prescribe regulations requiring a final determination by the Board within one year of initiation, which may be extended for up to six months for good cause. In contrast, currently for *inter partes* reexamination, the average time from the filing to the publication of a certificate ranged from 28.9 to 41.7 months during fiscal years 2009–2011. *See* Reexaminations—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.*

Likewise, it is anticipated that the proposed rules will minimize duplication of efforts. In particular, the Leahy-Smith America Invents Act provides more coordination between district court infringement litigation and post-grant or covered business method patent reviews to reduce duplication of efforts and costs.

The *AIPLA Report of the Economic Survey 2011* reports that the total cost of patent litigation where the damages at risk are less than $1,000,000 average $916,000, where the damages at risk are between $1,000,000 and $25,000,000 average $2,769,000, and where the damages at risk exceed $25,000,000 average $6,018,000. There may be a significant reduction in overall burden if, as intended, the Leahy-Smith America Invents Act and the proposed rules reduce the overlap between review at the USPTO of issued patents and validity determination during patent infringement actions. Data from the United States district courts reveals that 2,830 patent cases were filed in 2006, 2,896 in 2007, 2,909 in 2008, 2,792 in 2009, and 3,301 in 2010. *See* U.S. Courts, Judicial Business of the United States Courts, *www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2010/appendices/C02ASep10.pdf* (last visited Nov. 11, 2011) (hosting annual reports for 1997 through 2010). Thus, the Office estimates that no more than 3,300 patent cases (the highest number of yearly filings between 2006 and 2010 rounded to the nearest 100) are likely to be filed annually. The aggregate burden estimate above ($22,761,410) was not offset by a reduction in burden based on improved coordination between district court patent litigation and the new *inter partes* review proceedings.

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996). This rulemaking carries out a statute designed to lessen litigation. *See* H.R. Rep. No. 112–98, at 45–48.

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501–1571.

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321–4370h.

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this notice has been submitted to OMB under OMB control number 0651–00xx. In the Notice ''Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,'' RIN 0651–AC70, the information collection for all of the new trials authorized by the Leahy-Smith America Invents Act were provided. In the Notice ''Changes to Implement Post-Grant Review Proceedings,'' RIN 0651–AC72, the information collection for post-grant review and covered business method patent review combined authorized by the Leahy-Smith America Invents Act were provided. This notice also provides the subset of burden created by the covered business method patent review provisions. The proposed collection will be available at the OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

The USPTO is submitting the information collection to OMB for its review and approval because this notice of proposed rulemaking will add the following to a collection of information:

(1) Petitions to institute a post-grant review (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(2), 42.63, 42.65, and 42.201 through 42.205);

(2) petitions to institute a covered business method patent review (§§ 42.5, 42.6, 42.8, 42.11, 42.13, 42.20, 42.21, 42.22, 42.24(a)(3), 42.63, 42.65, 42.203, 42.205, and 42.302 through 42.304);

(3) motions (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(5), 42.51 through 42.54, 42.63, 42.64, 42.65, 42.221, 42.123, and 42.223);

(4) oppositions (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.207, and 42.220);

(5) replies provided for in 35 U.S.C. 321–329 (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(c), 42.51, 42.52, 42.53, 42.54, 42.63, and 42.65).

The proposed rules also permit filing requests for oral argument (§ 42.70) provided for in 35 U.S.C. 326(a)(10), requests for rehearing (§ 42.71(c)), requests for adverse judgment (§ 42.73(b)), and requests that a

settlement be treated as business confidential (§ 42.74(b)) provided for in 35 U.S.C. 327.

I. Abstract: The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, issue applications as patents.

Chapter 32 of title 35 U.S.C. in effect on September 16, 2012, provides for post-grant review proceedings allowing third parties to petition the USPTO to review the patentability of an issued patent under any ground authorized under 35 U.S.C. 282(b)(2). If a trial is initiated by the USPTO based on the petition, as authorized by the USPTO, additional motions may be filed by the petitioner. A patent owner may file a response to the petition and if a trial is instituted, as authorized by the USPTO, may file additional motions.

Section 18 of the Leahy-Smith America Invents Act provides for a transitional program for covered business method patents, which will employ the standards and procedures of the post-grant review proceeding with a few exceptions.

In estimating the number of hours necessary for preparing a petition to institute a post-grant or covered business method patent review, the USPTO considered the estimated cost of preparing a request for *inter partes* reexamination ($46,000), the median billing rate ($340/hour), and the observation that the cost of *inter partes* reexamination has risen the fastest of all litigation costs since 2009 in the *AIPLA Report of the Economic Survey 2011.* Since additional grounds are provided in post-grant or covered business method patent review, the Office estimates the cost of preparing a petition to institute a review will be 33.333% more than the estimated cost of preparing a request for *inter partes* reexamination, or $61,333.

In estimating the number of hours necessary for preparing motions after instituting and participating in the review, the USPTO considered the *AIPLA Report of the Economic Survey 2011* which reported the average cost of a party to a two-party interference to the end of the preliminary motion phase ($322,000) and inclusive of all costs ($631,000). The Office considered that the preliminary motion phase is a good proxy for patentability reviews since that is the period of current contested cases before the trial section of the Board where most patentability motions are currently filed.

The USPTO also reviewed recent contested cases before the trial section of the Board to make estimates on the average number of motions for any matter including priority, the subset of those motions directed to non-priority issues, the subset of those motions directed to non-priority patentability issues, and the subset of those motions directed to patentability issues based on a patent or printed publication on the basis of 35 U.S.C. 102 or 103. The review of current contested cases before the trial section of the Board indicated that approximately 15% of motions were directed to prior art grounds, 18% of motions were directed to other patentability grounds, 27% were directed to miscellaneous issues, and 40% were directed to priority issues. It was estimated that the cost per motion to a party in current contested cases before the trial section of the Board declines because of overlap in subject matter, expert overlap, and familiarity with the technical subject matter. Given the overlap of subject matter, a proceeding with fewer motions will have a somewhat less than proportional decrease in costs since the overlapping costs will be spread over fewer motions.

It is estimated that the cost of an *inter partes* review would be 60% of the cost of current contested cases before the trial section of the Board to the end of the preliminary motion period. An *inter partes* review should have many fewer motions since only one party will have a patent that is the subject of the proceeding (compared with each party having at least a patent or an application in current contested cases before the trial section of the Board). Moreover, fewer issues can be raised since *inter partes* review will not have priority-related issues that must be addressed in current contested cases before the trial section of the Board. Consequently, a 60% weighting factor should capture the typical costs of an *inter partes* review.

It is estimated that the cost of a post-grant or covered business method patent review would be 75% of the cost of current contested cases before the trial section of the Board to the end of the preliminary motion period. A post-grant or covered business method patent review should have many fewer motions since only one party will have a patent that is the subject of the proceeding (compared with each party having at least a patent or an application in current contested cases before the trial section of the Board). Moreover, fewer issues can be raised since post-grant and covered business method patent reviews will not have the priority-related issues that must be addressed in current contested cases before the trial section of the Board before the priority phase. Again, a 75% weighting factor should capture the typical costs of a post-grant or covered business method patent review.

The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burdens for the post-grant and covered business method patent review provisions. Included in this estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the proposed changes in this notice of proposed rulemaking is to implement the changes to Office practice necessitated by §§ 6(d) and 18 of the Leahy-Smith America Invents Act.

The public uses this information collection to request review and derivation proceedings and to ensure that the associated fees and documentation are submitted to the USPTO.

II. Data

Needs and Uses: The information supplied to the USPTO by a petition to institute a review as well as the motions authorized following the institution is used by the USPTO to determine whether to initiate a review under 35 U.S.C. 324 and to prepare a final decision under 35 U.S.C. 328.

OMB Number: 0651–00xx.

Title: Patent Review and Derivation Proceedings.

Form Numbers: None.

Type of Review: New Collection.

Likely Respondents/Affected Public: Individuals or households, businesses or other for profit, not-for-profit institutions, farms, Federal Government, and state, local, or tribal governments.

Estimated Number of Respondents/ Frequency of Collection: 100 respondents and 515 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public from 0.1 to 180.4 hours to gather the necessary information, prepare the documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 60,016.5 hours per year.

Estimated Total Annual (Hour) Respondent Cost Burden: $20,405,610 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of $340 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for this collection will be approximately $20,405,610 per year (60,016.5 hours per year multiplied by $340 per hour).

Estimated Total Annual Non-hour Respondent Cost Burden: $2,355,800

per year. There are no capital start-up or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees. There are filing fees associated with petitions for post-grant and covered business method patent review and for requests to treat a settlement as business confidential. The total fees for this collection are calculated in the accompanying table. The USPTO estimates that the total fees associated with this collection will be approximately $2,355,800 per year.

Therefore, the total estimated cost burden in fiscal year 2013 is estimated to be $22,761,410 (the sum of the estimated total annual (hour) respondent cost burden ($20,405,610) plus the estimated total annual non-hour respondent cost burden ($2,355,800)).

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Petition for post-grant or covered business method patent review	180.4	50	9,020
Reply to initial post-grant or covered business method patent review	100	45	4,500
Request for Reconsideration	80	14	1,120
Motions, replies and oppositions after institution in post-grant or covered business method patent review	130	342	44,460
Request for oral hearing	20	45	900
Request to treat a settlement as business confidential	2	2	4
Request for adverse judgment, default adverse judgment or settlement	1	10	10
Request to make a settlement agreement available	1	2	2
Notice of judicial review of a Board decision (*e.g.,* notice of appeal under 35 U.S.C. 142)	0.1	5	0.5
Totals		515	60,016.5

Item	Estimated annual responses	Fee amount	Estimated annual filing costs
Petition for post-grant or covered business method patent review	50	$47,100	$2,355,000
Reply to post-grant or covered business method patent review petition	45	0	0
Request for Reconsideration	14	0	0
Motions, replies and oppositions after initiation in post-grant or covered business method patent review	342	0	0
Request for oral hearing	45	0	0
Request to treat a settlement as business confidential	2	0	0
Request for adverse judgment, default adverse judgment or settlement	10	0	0
Request to make a settlement agreement available	2	400	800
Notice of judicial review of a Board decision (*e.g.,* notice of appeal under 35 U.S.C. 142)	5	0	0
Totals	515		$2,355,800

III. Solicitation

The agency is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Interested persons are requested to send comments regarding this information collection by April 10, 2012, to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Nicholas A. Fraser, the Desk Officer for the United States Patent and Trademark Office, and via email at *nfraser@omb.eop.gov;* and (2) The Board of Patent Appeals and Interferences by electronic mail message over the Internet addressed to: *post_grant_review@uspto.gov,* or by mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Judge Michael Tierney, Post-Grant Review Proposed Rules.''

Notwithstanding any other provision of law, no person is 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 currently valid OMB control number.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

Proposed Amendments to the Regulatory Text

For the reasons stated in the preamble, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office propose to amend 37 CFR part 42 as proposed to be added in the February 9, 2012, issue of the **Federal Register** as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

1. The authority citation for 37 CFR part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326 and Leahy-Smith America Invents Act, Pub. L. 112–29, sections 6(c), 6(f), and 18, 125 Stat. 284, 304, 311, and 329 (2011).

2. A subpart C is added to read as follows:

Subpart C—Post-Grant Review

General

Sec.
42.200 Procedure; pendency.
42.201 Who may petition for a post-grant review.
42.202 Time for filing.
42.203 Post-grant review fee.
42.204 Content of petition.
42.205 Service of petition.
42.206 Filing date.
42.207 Preliminary response to petition.

Instituting Post-Grant Review

42.208 Institution of post-grant review.

After Institution of Post-Grant Review

42.220 Patent owner response.
42.221 Amendment of the patent.
42.222 Multiple proceedings.
42.223 Filing of supplemental information.
42.224 Discovery.

Subpart C—Post-Grant Review

General

§ 42.200 Procedure; pendency.

(a) A post-grant review is a trial subject to the procedures set forth in subpart A of this part.

(b) A claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.

(c) A post-grant review proceeding shall be administered such that pendency before the Board after institution is normally no more than one year. The time can be extended by up to six months for good cause by the Chief Administrative Patent Judge.

(d) Interferences commenced before September 16, 2012, shall proceed under part 41 of this chapter except as the Chief Administrative Patent Judge, acting on behalf of the Director, may otherwise order in the interests of justice.

§ 42.201 Who may petition for a post-grant review.

A person who is not the owner of a patent may file with the Office a petition to institute a post-grant review of the patent unless:

(a) Before the date on which the petition for review is filed, the petitioner or real party in interest filed a civil action challenging the validity of a claim of the patent; or

(b) The petitioner, the petitioner's real party in interest, or a privy of the petitioner is estopped from challenging the claims on the grounds identified in the petition.

§ 42.202 Time for filing.

(a) A petition for a post-grant review of a patent must be filed no later than the date that is nine months after the date of the grant of a patent or of the issuance of a reissue patent. A petition, however, may not request a post-grant review for a claim in a reissue patent that is identical to or narrower than a claim in the original patent from which the reissue patent was issued unless the petition is filed not later than the date that is nine months after the date of the grant of the original patent.

(b) The Director may impose a limit on the number of post-grant reviews that may be instituted during each of the first four one-year periods in which 35 U.S.C. 321 is in effect by providing notice in the Office's Official Gazette or **Federal Register**. Petitions filed after an established limit has been reached will be deemed untimely.

§ 42.203 Post-grant review fee.

(a) A post-grant review fee set forth in § 42.15(b) must accompany the petition.

(b) No filing date will be accorded to the petition until full payment is received.

§ 42.204 Content of petition.

In addition to the requirements of §§ 42.8 and 42.22, the petition must set forth:

(a) *Grounds for standing.* The petitioner must certify that the patent for which review is sought is available for post-grant review and that the petitioner is not barred or estopped from requesting a post-grant review of the patent.

(b) *Identification of challenge.* Provide a statement of the precise relief requested for each claim challenged. The statement must identify the following:

(1) The claim;

(2) The specific statutory grounds permitted under paragraph (2) or (3) of 35 U.S.C. 282(b) on which the challenge to the claim is based;

(3) How the challenged claim is to be construed. Where the claim to be construed contains a means-plus-function or step-plus-function limitation as permitted under 35 U.S.C. 112, sixth paragraph, the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function;

(4) How the construed claim is unpatentable under the statutory grounds identified in paragraph (b)(2) of this section. Where the grounds for unpatentability are based on prior art, the petition must specify where each element of the claim is found in the prior art. For all other grounds of unpatentability, the petition must identify the specific part of the claim that fails to comply with the statutory grounds raised and state how the identified subject matter fails to comply with the statute; and

(5) The exhibit number of the supporting evidence relied upon to support the challenge and state the relevance of the evidence to the challenge raised, including identifying specific portions of the evidence that support the challenge. The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.

(c) A motion may be filed that seeks to correct a clerical or typographical mistake in the petition. The grant of such a motion does not change the filing date of the petition.

§ 42.205 Service of petition.

In addition to the requirements of § 42.6, the petitioner must serve the petition and exhibits relied upon in the petition as follows:

(a) The petition and supporting evidence must be served on the patent owner at the correspondence address of record for the subject patent. The petitioner may additionally serve the petition and supporting evidence on the patent owner at any other address known to the petitioner as likely to effect service.

(b) If the petitioner cannot effect service of the petition and supporting evidence on the patent owner at the correspondence address of record for the subject patent, the petitioner must immediately contact the Board to discuss alternate modes of service.

§ 42.206 Filing date.

(a) *Complete petition.* A petition to institute a post grant review will not be accorded a filing date until the petition satisfies all of the following requirements:

(1) Complies with § 42.204 or § 42.304,

(2) Service of the petition on the correspondence address of record as provided in § 42.205(a); and

(3) Is accompanied by the filing fee in § 42.15(b).

(b) *Incomplete request.* Where a party files an incomplete petition, no filing date will be accorded and the Office will dismiss the request if the deficiency in the petition is not corrected within the earlier of either one month from the notice of an incomplete petition, or the expiration of the statutory deadline in which to file a petition for post-grant review.

§ 42.207 Preliminary response to petition.

(a) The patent owner may file a preliminary response to the petition. The response is limited to setting forth the reasons why no post-grant review should be instituted under 35 U.S.C. 324. The response can include evidence except as provided in paragraph (c) of this section. The preliminary response is an opposition for purposes of determining page limits under § 42.24.

(b) *Due date.* The preliminary response must be filed no later than two months after the date of a notice indicating that the request to institute a post-grant review has been granted a filing date. A patent owner may expedite the proceeding by filing an election to waive the preliminary patent owner response.

(c) *No new testimonial evidence.* The preliminary response shall not present new testimony evidence beyond that already of record.

(d) *No amendments.* The preliminary response shall not include any amendment.

(e) *Disclaim Patent Claims.* The patent owner may file a statutory disclaimer under 35 U.S.C. 253(a) in compliance with § 1.321(a), disclaiming one or more claims in the patent. No post-grant review will be instituted based on disclaimed claims.

Instituting Post-Grant Review

§ 42.208 Institution of post-grant review.

(a) When instituting post-grant review, the Board may authorize the review to proceed on all or some of the challenged claims and on all or some of the grounds of unpatentability asserted for each claim.

(b) At any time prior to institution of post-grant review, the Board may deny some or all grounds for unpatentability for some or all of the challenged claims. Denial of a ground is a Board decision not to institute post-grant review on that ground.

(c) *Sufficient grounds.* Post-grant review shall not be instituted for a ground of unpatentability, unless the Board decides that the petition supporting the ground would, if unrebutted, demonstrate that it is more likely than not that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a preliminary patent owner response where such a response is filed.

(d) *Additional grounds.* Sufficient grounds under § 42.208(c) may be a showing that the petition raises a novel or unsettled legal question that is important to other patents or patent applications.

After Institution of Post-Grant Review

§ 42.220 Patent owner response.

(a) *Scope.* A patent owner may file a response to the petition addressing any ground for unpatentability not already denied. A patent owner response is filed as an opposition and is subject to the page limits provided in § 42.24.

(b) *Due date for response.* If no date for filing a patent owner response to a petition is provided in a Board order, the default date for filing a patent owner response is two months from the date the post-grant review is instituted.

§ 42.221 Amendment of the patent.

(a) A patent owner may file one motion to amend a patent but only after conferring with the Board. Any additional motions to amend may not be filed without Board authorization.

(b) A motion to amend must set forth:

(1) The support in the original disclosure of the patent for each claim that is added or amended; and

(2) The support in an earlier filed disclosure for each claim for which benefit of the filing date of the earlier filed disclosure is sought.

(c) A motion to amend the claims of a patent will not be authorized where:

(1) The amendment does not respond to a ground of unpatentability involved in the trial; or

(2) The amendment seeks to enlarge the scope of the claims of the patent or introduce new subject matter.

§ 42.222 Multiple proceedings.

Where another matter involving the patent is before the Office, the Board may during the pendency of the post-grant review enter any appropriate order regarding the additional matter including providing for the stay, transfer, consolidation, or termination of any such matter.

§ 42.223 Filing of supplemental information.

Once a trial has been instituted, a petitioner may request authorization to file a motion identifying supplemental information relevant to a ground for which the trial has been instituted. The request must be made within one month of the date the trial is instituted.

§ 42.224 Discovery.

Notwithstanding the discovery provisions of subpart A:

(a) Requests for additional discovery may be granted upon a showing of good cause as to why the discovery is needed; and

(b) Discovery is limited to evidence directly related to factual assertions advanced by either party in the proceeding.

Dated: January 31, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–2529 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2011–0085]

RIN 0651–AC73

Changes To Implement Transitional Program for Covered Business Method Patents

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes new rules to implement the provisions of the Leahy-Smith America Invents Act that create a new transitional post-grant review proceeding for covered business method patents to be conducted before the Patent Trial and Appeal Board (Board). These provisions of the Leahy-Smith America Invents Act will take effect on September 16, 2012, one year after the date of enactment. These provisions and any regulations issued under these provisions will be repealed on September 16, 2020, with respect to any new petitions under the transitional program.

DATES: The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before April 10, 2012 to ensure consideration.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *TPCBMP_Rules@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Judge Michael Tierney, Covered Business Method Patent Review Proposed Rules.''

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. *See* the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Board of Patent Appeals and Interferences, currently located in Madison East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Michael Tierney, Lead Administrative Patent Judge, Sally Medley, Administrative Patent Judge, Robert Clarke, Administrative Patent Judge, and Joni Chang, Administrative Patent Judge, Board of Patent Appeals and Interferences, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION: On September 16, 2011, the Leahy-Smith America Invents Act was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)). The purpose of the Leahy-Smith America Invents Act and these proposed regulations is to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs. The preamble of this notice sets forth in detail the procedures by which the Board will conduct transitional covered business method patent review proceedings. The USPTO is engaged in a transparent process to create a timely, cost-effective alternative to litigation. Moreover, the rulemaking process is designed to ensure the integrity of the trial procedures. *See* 35 U.S.C. 326(b). The proposed rules would provide a set of rules relating to Board trial practice for transitional covered business method review proceedings.

Section 18 of the Leahy-Smith America Invents Act provides that the Director will establish regulations establishing and implementing a transitional program for the review of covered business method patents. Section 18(a)(1) of the Leahy-Smith America Invents Act provides that the transitional proceeding will be regarded as, and will employ the standards and procedures of, a post-grant review under chapter 32 of title 35, United States Code, subject to certain exceptions. For instance, a petitioner in a covered business method patent review may request to cancel as unpatentable one or more claims of a patent on any ground that could be raised under 35 U.S.C. 282(b)(2) or (3) (relating to invalidity of the patent or any claim) (*see* 35 U.S.C. 321(b)); and the determination by the Director whether to institute a covered business method patent review will be final and nonappealable (*see* 35 U.S.C. 324(e)). Section 18(a)(1)(A) of the Leahy-Smith America Invents Act provides that 35 U.S.C. 321(c) and 35 U.S.C. 325(b), (e)(2), and (f) will not apply to a transitional proceeding.

Section 18(a)(1)(B) of the Leahy-Smith America Invents Act specifies that a person may not file a petition for a transitional proceeding with respect to a covered business method patent unless the person or person's real party in interest or privy has been sued for infringement of the patent or has been charged with infringement under that patent.

Section 18(a)(1)(C) of the Leahy-Smith America Invents Act further provides that limited prior art shall apply for those challenged covered business method patents granted under first-to-invent provisions. Specifically, section 18(a)(1)(C) provides:

- A petitioner in a transitional proceeding who challenges the validity of 1 or more claims in a covered business method patent on a ground raised under section 102 or 103 of title 35, United States Code, as in effect on the day before the effective date set forth in section 3(n)(1), may support such ground only on the basis of—
- prior art that is described by section 102(a) of such title (as in effect on the day before such effective date); or
- prior art that—
  - discloses the invention more than 1 year before the date of the application for patent in the United States; and
  - would be described by section 102(a) of such title (as in effect on the day before the effective date set forth in section 3(n)(1)) if the disclosure had been made by another before the invention thereof by the applicant for patent.

Section 18 of the Leahy-Smith America Invents Act provides that the Director may institute a transitional proceeding only for a patent that is a covered business method patent. Section 18(d)(1) of the Leahy-Smith America Invents Act specifies that a covered business method patent is a patent that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions. Section 18(d)(2) provides that the Director will issue regulations for determining whether a patent is for a technological invention.

The Leahy-Smith America Invents Act provides that the transitional program for the review of covered business method patents will take effect on September 16, 2012, one year after the date of enactment, and applies to any covered business method patent issued before, on, or after September 16, 2012. Section 18 of the Leahy-Smith America Invents Act and the regulations issued under § 18 are repealed on September 16, 2020. Section 18 and the regulations issued will continue to apply after September 16, 2020, to any petition for a transitional proceeding that is filed before September 16, 2020. The Office will not consider a petition for a transitional proceeding that is filed on or after September 16, 2020.

Discussion of Specific Rules

This notice proposes new rules to implement the provisions of the Leahy-Smith America Invents Act for the transitional program for covered business method patents. As previously discussed, § 18(a)(1) of the Leahy-Smith America Invents Act provides that the Director shall issue regulations establishing and implementing a transitional post-grant review proceeding for the review of covered business method patents. In particular, this notice proposes to add a new subpart D to 37 CFR part 42 to provide rules specific to transitional post-grant review of covered business method patents. Pursuant to § 18(d)(2) of the Leahy-Smith America Invents Act, the Office in a separate rulemaking is proposing the definition of a technological invention (RIN 0651–AC75).

Additionally, the Office in a separate rulemaking is proposing to add part 42, including subpart A, (0651–AC70) that would include a consolidated set of rules relating to Board trial practice. More specifically, the proposed subpart A of part 42 would set forth the policies, practices, and definitions common to all trial proceedings before the Board. The proposed rules in the instant notice and discussion below may reference the proposed rules in subpart A of part 42. Furthermore, the Office in separate rulemakings is proposing to add a new

subpart B to 37 CFR part 42 (RIN 0651–AC71) to provide rules specific to *inter partes* review, a new subpart C to 37 CFR part 42 (RIN 0651–AC72) to provide rules specific to post-grant review, and a new subpart E to 37 CFR part 42 (RIN 0651–AC74) to provide rules specific to derivation. The notices of proposed rulemaking are available on the USPTO Internet Web site at *www.uspto.gov.*

Title 37 of the Code of Federal Regulations, Chapter I, Part 42, Subpart D, entitled ''Transitional Program for Covered Business Method Patents'' is proposed to be added as follows:

Section 42.300: Proposed § 42.300 would set forth policy considerations for covered business method patent review proceedings.

Proposed § 42.300(a) would provide that a covered business method patent review is a trial and subject to the rules set forth in subpart A and also subject to the post-grant review procedures set forth in subpart C except for §§ 42.200, 42.201, 42.202, and 42.204. This is consistent with § 18(a)(1) of the Leahy-Smith America Invents Act, which provides that the transitional proceeding shall be regarded as, and shall employ the standards and procedures of, a post-grant review with certain exceptions.

Proposed § 42.300(b) would provide that a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification in which it appears. This proposed rule would be consistent with longstanding established principles of claim construction before the Office. *See, e.g., In re Am. Acad. of Sci. Tech Ctr.,* 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Yamamoto,* 740 F.2d 1569, 1571 (Fed. Cir. 1984). As explained in *Yamamoto,* a party's ability to amend claims to avoid prior art distinguishes Office proceedings from district court proceedings and justifies the difficult standard for claim interpretation. *Yamamoto,* 740 F.2d at 1572.

Proposed § 42.300(c) would provide a one-year timeframe for administering the proceeding after institution, with a six-month extension for good cause. This proposed rule is consistent with 35 U.S.C. 326(a)(11), which sets forth statutory timeframes for post-grant review.

Proposed § 42.300(d) would provide that the rules in subpart D are in effect until September 15, 2020, except that the rules shall continue to apply to any covered business method patent review filed before the date of repeal. This is consistent with § 18(a)(3) of the Leahy-Smith America Invents Act, which provides that the regulations issued are repealed effective upon the expiration of the eight-year period beginning on the date that the regulations take effect.

Section 42.301: Proposed § 42.301 would provide definitions specific to covered business method patent reviews.

Proposed § 42.301(a) would adopt the definition for covered business method patents provided in § 18(d)(1) of the Leahy-Smith America Invents Act. Specifically, the proposed definition would provide that *covered business method patent* means a patent that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions.

Pursuant to § 18(d)(2) of the Leahy-Smith America Invents Act, the Office in a separate rulemaking is proposing the definition of a technological invention, which would be set forth in proposed § 42.301(b).

Section 42.302: Proposed § 42.302 would identify who may file a petition for a covered business method patent review.

Proposed § 42.302(a) would provide that a petitioner may not file a petition to institute a covered business method patent review of the patent unless the petitioner, the petitioner's real party in interest, or a privy of the petitioner has been sued for infringement of the patent or has been charged with infringement under that patent. This proposed rule is consistent with § 18(a)(1)(B) of the Leahy-Smith America Invents Act.

Proposed § 42.302(b) would provide that a petitioner may not file a petition to institute a covered business method patent review of the patent where the petitioner, the petitioner's real party in interest, or a privy of the petitioner is estopped from challenging the claims on the grounds identified in the petition. The proposed rule is consistent with 35 U.S.C. 325(e)(1), which provides for estoppel based upon a final written decision in a post-grant review.

Section 42.303: Proposed § 42.303 would provide that a petition for a covered business method patent review may be filed at any time prior to or after the time a petition for a post-grant review of the patent would satisfy the requirements of 35 U.S.C. 321(c). This proposed rule is consistent with § 18(a)(2) of the Leahy-Smith America Invents Act.

Section 42.304: Proposed § 42.304 would provide for the content of petitions to institute a covered business method patent review. The proposed rule is consistent with 35 U.S.C. 322(a)(4), which allows the Director to prescribe regulations concerning the information provided with the petition to institute a covered business patent review.

Proposed § 42.304(a) would provide that a petition under this section must demonstrate that the petitioner has grounds for standing. To establish standing, a petitioner, at a minimum, would be required to certify that the patent is available for covered business method patent review and that the petitioner meets the eligibility requirements of § 42.302. This proposed requirement attempts to ensure that a party has standing to file the covered business method patent review and would help prevent spuriously instituted reviews. Facially improper standing would be a basis for denying the petition without proceeding to the merits of the decision.

Proposed § 42.304(b) would require that the petition identify the precise relief requested for the claims challenged. Specifically, the proposed rule would require that the petition identify each claim being challenged, the specific grounds on which each claim is challenged, how the claims are to be construed, why the claims as construed are unpatentable, and the exhibit numbers of the evidence relied upon with a citation to the portion of the evidence that is relied upon to support the challenge. This proposed rule is consistent with 35 U.S.C. 322(a)(3), which requires that the petition identify, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence supporting the challenge. It is also consistent with 35 U.S.C. 322(a)(4), which allows the Director to require additional information as part of the petition. The proposed rule would provide an efficient means for identifying the legal and factual basis supporting a prima facie case of relief and would provide the patent owner with a minimum level of notice as to the basis for the challenge to the claims.

Proposed § 42.304(c) would provide that a petitioner seeking to correct clerical or typographical mistakes could file a motion to correct the mistakes. The proposed rule would also provide that the grant of such a motion would not alter the filing date of the petition.

Rulemaking Considerations

A. Administrative Procedure Act (APA): This notice proposes rules of practice concerning the procedure for requesting a covered business method patent review, and the trial process after

initiation of such a review. The changes being proposed in this notice do not change the substantive criteria of patentability. These proposed changes involve rules of agency practice and procedure and/or interpretive rules. *See Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these changes and the Initial Regulatory Flexibility Act analysis, below, for comment as it seeks the benefit of the public's views on the Office's proposed implementation of these provisions of the Leahy-Smith America Invents Act.

B. Regulatory Flexibility Act: The Office estimates that 50 petitions for covered business method patent review will be filed in fiscal year 2013. This will be the first fiscal year in which the review proceeding will be available for an entire fiscal year. The estimated number of covered business method patent review petitions is based on the number of *inter partes* reexamination requests filed in fiscal year 2011 for patents having an original classification in class 705 of the United States Patent Classification System. Class 705 is the classification for patents directed to data processing in the following areas: financial, business practice, management, or cost/price determination. *See http://www.uspto.gov/web/patents/classification/uspc705/sched705.pdf.*

The following is the class definition and description for Class 705:

This is the generic class for apparatus and corresponding methods for performing *data processing* operations, in which there is a significant change in the data or for performing *calculation operations* wherein the apparatus or method is uniquely designed for or utilized in the *practice,* administration, or management of an *enterprise,* or in the processing of financial data.

This class also provides for apparatus and corresponding methods for performing *data processing* or *calculating operations* in which a charge for goods or services is determined.

This class additionally provides for subject matter described in the two paragraphs above in combination with cryptographic apparatus or method.

Subclasses 705/300–348 were established prior to complete reclassification of all project documents. Documents that have not yet been reclassified have been placed in 705/1.1. Until reclassification is finished a complete search of 705/300–348 should include a search of 705/1.1. Once the project documents in 705/1.1 have been reclassified they will be moved to the appropriate subclasses and this note will be removed.

Scope of the Class

1. The *arrangements* in this class are generally used for problems relating to administration of an organization, commodities or financial transactions.

2. Mere designation of an arrangement as a ''business machine'' or a document as a ''business form'' or ''business chart'' without any particular business function will not cause classification in this class or its subclasses.

3. For classification herein, there must be significant claim recitation of the data processing system or calculating computer and only nominal claim recitation of any external art environment. Significantly claimed apparatus external to this class, claimed in combination with apparatus under the class definition, which perform data processing or calculation operations are classified in the class appropriate to the external device unless specifically excluded therefrom.

4. Nominally claimed apparatus external to this class in combination with apparatus under the class definition is classified in this class unless provided for in the appropriate external class.

5. In view of the nature of the subject matter included herein, consideration of the classification schedule for the diverse art or environment is necessary for proper search.

See Classification Definitions (Feb. 2011) available at *http://www.uspto.gov/web/patents/classification/uspc705/defs705.htm.*

Accordingly, patents subject to covered business method patent review are anticipated to be typically classifiable in Class 705. It is anticipated that the number of patents in Class 705 that do not qualify as covered business method patents would approximate the number of patents classified in other classes that do qualify.

The Office received 20 requests for *inter partes* reexamination of patents classified in Class 705 in fiscal year 2011. The Office in estimating the number of petitions for covered business method patent review to be higher than 20 requests due to an expansion of the grounds for which review may be requested including subject matter eligibility grounds, the greater coordination with litigation, and the provision that patents will be eligible for the proceeding regardless of filing date of the application which resulted in the patent.

The Office has reviewed the entity status of patents for which *inter partes* reexamination was requested from October 1, 2000, to September 23, 2011. This data only includes filings granted a filing date in the particular year rather than filings in which a request was received in the year. The first *inter partes* reexamination was filed on July 27, 2001. A summary of that review is provided in Table 1 below. As shown by Table 1, patents known to be owned by a small entity represented 32.79% of patents for which *inter partes* reexamination was requested. Based on an assumption that the same percentage of patents owned by small entities will be subject to covered business method patent review, it is estimated that 16 petitions for covered business method patent review would be filed to seek review of patents owned by a small entity in fiscal year 2013, the first full fiscal year that these proceedings will be available.

TABLE 1—INTER PARTES REEXAMINATION REQUESTS FILED WITH PARENT ENTITY TYPE *

Fiscal year	*Inter partes* reexamination requests filed	Number filed where parent patent is small entity type	Percent small entity type of total
2011	329	123	37.39
2010	255	94	36.86
2009	240	62	25.83
2008	155	52	33.55

TABLE 1—INTER PARTES REEXAMINATION REQUESTS FILED WITH PARENT ENTITY TYPE *—Continued

Fiscal year	*Inter partes* reexamination requests filed	Number filed where parent patent is small entity type	Percent small entity type of total
2007	127	35	27.56
2006	61	17	27.87
2005	59	18	30.51
2004	26	5	19.23
2003	21	12	57.14
2002	4	1	25.00
2001	1	0	0.00
Totals	1,278	419	32.79

* Small entity status determined by reviewing preexamination small entity indicator for the parent patent.

Based on the number of patents issued during fiscal years 1995 through 1999 that paid the small entity third stage maintenance fee, the number of patents issued during fiscal years 2000 through 2003 that paid the small entity second stage maintenance fee, the number of patents issued during fiscal years 2004 through 2007 that paid the first stage maintenance fee, and the number of patents issued during fiscal years 2008 through 2011 that paid a small entity issue fee, there are no less than 375,000 patents owned by small entities in force as of October 1, 2011.

Furthermore, the Office recognizes that there would be an offset to this number for patents that expire earlier than 20 years from their filing date due to a benefit claim to an earlier application or due to a filing of a terminal disclaimer. The Office likewise recognizes that there would be an offset in the opposite manner due to the accrual of patent term extension and adjustment. The Office, however, does not maintain data on the date of expiration by operation of a terminal disclaimer. Therefore, the Office has not adjusted the estimate of 375,000 patents owned by small entities in force as of October 1, 2011. While the Office maintains information regarding patent term extension and adjustment accrued by each patent, the Office does not collect data on the expiration date of patents that are subject to a terminal disclaimer. As such, the Office has not adjusted the estimated of 375,000 patents owned by small entities in force as of October 1, 2011, for accrual of patent term extension and adjustment, because in view of the incomplete terminal disclaimer data issue, would be incomplete and any estimate adjustment would be administratively burdensome. Thus, it is estimated that the number of small entity patents in force in fiscal year 2013 will be at least 375,000.

Based on the estimated number of patents in force, the number of small entity owned patents impacted by covered business method patent review in fiscal year 2013 (16 patents) would be less than 0.005% (16/375,000) of all patents in force that are owned by small entities. The USPTO nonetheless has undertaken an Initial Regulatory Flexibility Act Analysis of the proposed rule.

1. *Description of the Reasons That Action by the Office Is Being Considered:* On September 16, 2011, the Leahy-Smith America Invents Act was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)). Section 18 of the Leahy-Smith America Invents Act provides for a transitional program for covered business method patents which will employ the standards and procedures of the post-grant review proceeding with a few exceptions. For the implementation, § 6(f) of the Leahy-Smith America Invents Act requires that the Director issue regulations to carry out chapter 32 of title 35, United States Code, within one year after the date of enactment. Public Law 112–29, § 6(f), 125 Stat. 284, 311 (2011).

2. *Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rules:* The proposed rules seek to implement covered business method patent review as authorized by the Leahy-Smith America Invents Act. The Leahy-Smith America Invents Act requires that the Director prescribe rules for the covered business method patent reviews that result in a final determination not later than one year after the date on which the Director notices the institution of a proceeding. The one-year period may be extended for not more than 6 months if good cause is shown. *See* 35 U.S.C. 326(a)(11). The Leahy-Smith America Invents Act also requires that the Director, in prescribing rules for covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings. *See* 35 U.S.C. 326(b). Consistent with the time periods provided in 35 U.S.C. 326(a)(11), the proposed rules are designed to, except where good cause is shown to exist, result in a final determination by the Patent Trial and Appeal Board within one year of the notice of initiation of the review. This one-year review will enhance the effect on the economy, and improve the integrity of the patent system and the efficient administration of the Office.

3. *Description and Estimate of the Number of Affected Small Entities:* The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the Regulatory Flexibility Act, and after consultation with the Small Business Administration, the Office formally adopted an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR 67109 (Nov. 20, 2006), 1313 *Off. Gaz. Pat. Office* 60 (Dec. 12, 2006). This alternate small business size standard is SBA's previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. *See* 13 CFR 121.802. If patent applicants identify themselves on a patent application as qualifying for reduced patent fees, the Office captures this data in the Patent Application Location and Monitoring

(PALM) database system, which tracks information on each patent application submitted to the Office.

Unlike the SBA small business size standards set forth in 13 CFR 121.201, the size standard for USPTO is not industry-specific. The Office's definition of a small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 67112 (Nov 20, 2006), 1313 *Off. Gaz. Pat. Office* at 63 (Dec. 12, 2006).

As discussed above, it is anticipated that 50 petitions for covered business method patent review will be filed in fiscal year 2013. The Office has reviewed the percentage of patents for which *inter partes* reexamination was requested from October 1, 2000 to September 23, 2011. A summary of that review is provided in Table 1 above. As demonstrated by Table 1, patents known to be owned by a small entity represent 32.79% of patents for which *inter partes* reexamination was requested. Based on an assumption that the same percentage of patents owned by small entities will be subject to the new review proceedings, it is estimated that 16 patents owned by small entities would be affected by covered business method patent review.

The USPTO estimates that 2.5% of patent owners will file a request for adverse judgment prior to a decision to institute and that another 2.5% will file a request for adverse judgment or fail to participate after initiation. Specifically, an estimated 2 patent owners will file a request for adverse judgment or fail to participate after institution in covered business method proceedings. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%) from October 1, 2000 to September 23, 2011, it is estimated that 1 small entity will file such requests or fail to participate in covered business method patent review.

Under the proposed rules, prior to determining whether to institute a review, the patent owner may file an optional patent owner preliminary response to the petition. Given the new time period requirements to file review petitions relative to patent enforcement proceedings and the desire to avoid the cost of a trial and delays to related infringement actions, it is anticipated that 90% of petitions, other than those for which a request for adverse judgment is filed, will result in the filing of a patent owner preliminary response. Specifically, the Office estimates that 45 patent owners will file a preliminary response to a covered business method petition. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 15 small entities will file a preliminary response to a covered business method patent review petition filed in fiscal year 2013.

Under the proposed rules, the Office will determine whether to institute a trial within three months after the earlier of: (1) The submission of a patent owner preliminary response, (2) the waiver of filing a patent owner preliminary response, or (3) the expiration of the time period for filing a patent owner preliminary response. If the Office decides not to institute a trial, the petitioner may file a request for reconsideration of the Office's decision. In estimating the number of requests for reconsideration, the Office considered the percentage of *inter partes* reexaminations that were denied relative to those that were ordered (24 divided by 342, or 7%) in fiscal year 2011. *See* Reexamination—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.* The Office also considered the impact of: (1) Patent owner preliminary responses under newly authorized in 35 U.S.C. 323, (2) the enhanced thresholds for instituting reviews set forth in 35 U.S.C. 324(a), which would tend to increase the likelihood of dismissing a petition for review, and (3) the more restrictive time period for filing a petition for review in 35 U.S.C. 325(b), which would tend to reduce the likelihood of dismissing a petition. Based on these considerations, it is estimated that 10% of the petitions for review (5 divided by 49) would be dismissed.

During fiscal year 2011, the Office issued 21 decisions following a request for reconsideration of a decision on appeal in *inter partes* reexamination. The average time from original decision to decision on reconsideration was 4.4 months. Thus, the decisions on reconsideration were based on original decisions issued from July 2010 until June 2011. During this time period, the Office mailed 63 decisions on appeals in *inter partes* reexamination. *See* BPAI Statistics—Receipts and Dispositions by Technology Center, *http://www.uspto.gov/ip/boards/bpai/stats/receipts/index.jsp (monthly data).* Based on the assumption that the same rate of reconsideration (21 divided by 63 or 33.333%) will occur, the Office estimates that 2 requests for reconsideration will be filed. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 1 small entity will file a request for a reconsideration of a decision dismissing the petition for post-grant or covered business method patent review filed in fiscal year 2013.

The Office reviewed motions, oppositions, and replies in a number of contested trial proceedings before the trial section of the Board. The review included determining whether the motion, opposition, and reply were directed to patentability grounds and non-priority non-patentability grounds. Based on the review, it is anticipated that covered business method patent reviews will have an average of 8.89 motions, oppositions, and replies per trial after institution. Settlement is estimated to occur in 20% of instituted trials at various points of the trial. In the trials that are settled, it is estimated that only 50% of the noted motions, oppositions, and replies would be filed.

After a trial has been instituted but prior to a final written decision, parties to a covered business method patent review may request an oral hearing. It is anticipated that 45 requests for oral hearings will be filed based on the number of requests for oral hearings in *inter partes* reexamination, the stated desirability for oral hearings during the legislative process, and the public input received prior to this notice of proposed rulemaking. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 15 small entities will file a request for oral hearing in the covered business method patent reviews instituted in fiscal year 2013.

Parties to a covered business method patent review may file requests to treat a settlement as business confidential, and request for adverse judgment. A written request to make a settlement agreement available may also be filed. Given the short time period set for conducting trials, it is anticipated that

the alternative dispute resolution options will be infrequently used. The Office estimates that 2 requests to treat a settlement as business confidential, and 10 requests for adverse judgment, default adverse judgment, or settlement notices will be filed. The Office also estimatesthat 2 requests to make a settlement available will be filed. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 1 small entity will file a request to treat a settlement as business confidential and 3 small entities will file a request for adverse judgment, default adverse judgment notices, or settlement notices in the reviews instituted in fiscal year 2013.

Parties to a covered business method patent review may seek judicial review of the final decision of the Board. Historically, 33% of examiner's decisions in *inter partes* reexamination proceedings have been appealed to the Board. It is anticipated that 16% of final decisions of the Board would be appealed. The reduction in appeal rate is based on the higher threshold for institution, the focused process, and the experience of the Board in conducted contested cases. Therefore, it is estimated that 5 parties would seek judicial review of the final decisions of the Board in covered business method patent reviews instituted in fiscal year 2013. Furthermore, based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 2 small entities would seek judicial review of final decisions of the Board in the covered business method patent reviews instituted in fiscal year 2013.

4. *Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record:* Covered business method patent reviews would be limited to business method patents that are not patents for technological inventions. Under the proposed rules, a person who is not the owner of a patent may file a petition to institute a review of the patent, with a few exceptions. Given this, it is anticipated that a petition for review is likely to be filed by an entity practicing in the business method field for covered business methods.

Preparation of the petition would require analyzing the patent claims, locating evidence supporting arguments of unpatentability, and preparing the petition seeking review of the patent. This notice provides the proposed procedural requirements that are common for the new trials. Additional requirements are provided in contemporaneous trial specific proposed rulemaking. The procedures for petitions to institute a covered business method patent review are proposed in §§ 42.5, 42.6, 42.8, 42.11, 42.13, 42.20, 42.21, 42.22, 42.24(a)(3), 42.63, 42.65, 42.203, 42.205, and 42.302 through 42.304.

The skills necessary to prepare a petition for review and to participate in a trial before the Patent Trial and Appeal Board would be similar to those needed to prepare a request for *inter partes* reexamination, to represent a party in an *inter partes* reexamination, and to represent a party in an interference proceeding before the Patent Trial and Appeal Board. The level of skill is typically possessed by a registered patent practitioner having devoted professional time to the particular practice area, typically under the supervision of a practitioner skilled in the particular practice area. Where authorized by the Board, a non-registered practitioner may be admitted *pro hac vice,* on a case-by-case basis based on the facts and circumstances of the trial and party, as well as the skill of the practitioner.

The cost of preparing a petition for covered business method patent review is estimated to be 33.333% higher than the cost of preparing an *inter partes* review petition because the petition for covered business method patent review may seek to institute a proceeding on additional grounds such as subject matter eligibility. The American Intellectual Property Law Association's *AIPLA Report of the Economic Survey 2011* reported that the average cost of preparing a request for *inter partes* reexamination was $46,000. Based on the Office's consideration of the work required to prepare and file such a request, the Office estimates that the cost of preparing a petition for covered business method patent review would be $61,333 (including expert costs).

The filing of a petition for review would also require payment by the petitioner of the appropriate petition fee to recover the aggregate cost for providing the review. The appropriate petition fee would be determined by the number of claims for which review is sought and the type of review. The proposed fees for filing a petition for covered business method patent review would be: $35,800 to request review of 20 or fewer claims, $44,750 to request review of 21 to 30 claims, $53,700 to request review of 31 to 40 claims, $71,600 to request review of 41 to 50 claims, $89,500 to request review of 51 to 60 claims, and an additional $35,800 to request review of additional groups of 10 claims.

In setting fees, the estimated information technology cost to establish the process and maintain the filing and storage system through 2017 is to be recovered by charging each petition $2,270. The remainder of the fee is to recover the cost for judges to determine whether to institute a review and conduct the review, together with a proportionate share of indirect costs, *e.g.,* rent, utilities, additional support, and administrative costs. Based on the direct and indirect costs, the fully burdened cost per hour for judges to decide a petition and conduct a review is estimated to be $258.32.

For a petition for covered business method patent review with 20 or fewer challenged claims, it is anticipated that 121 hours of judge time would be required. For 21 to 30 challenged claims, an additional 30 hours is anticipated for a total of 151 hours of judge time. For 31 to 40 challenged claims, an additional 60 hours is anticipated for a total of 181 hours of judge time. For 41 to 50 challenged claims, an additional 121 hours is anticipated for a total of 242 hours of judge time. For 51 to 60 challenged claims, an additional 181 hours is anticipated for a total of 302 hours of judge time. The increase in adjustment reflects the added complexity that typically occurs as more claims are in dispute.

The proposed rules would permit the patent owner to file a preliminary response to the petition setting forth the reasons why no review should be initiated. The procedures for a patent owner to file a preliminary response as an opposition are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.107, 42.120, 42.207, and 42.220. The patent owner is not required to file a preliminary response. The Office estimates that the preparation and filing of a patent owner preliminary response would require 100 hours of professional time and cost $34,000 (including expert costs). The *AIPLA Report of the Economic Survey 2011* reported that the average cost for *inter partes* reexamination including of the request ($46,000), the first patent owner response, and third party comments was $75,000 (*see* I–175) and the median billing rate for professional time of $340 per hour for attorneys in private firms (*see 8).* Thus, the cost of the first patent owner reply and the third party statement is $29,000. The

Office finds these costs to be reasonable estimates. The patent owner reply and third party statement, however, occur after the examiner has made an initial threshold determination and made only the appropriate rejections. Accordingly, it is anticipated that filing a patent owner preliminary response to a petition for review would cost more than the initial reply in a reexamination, or an estimated $34,000 (including expert costs).

The Office will determine whether to institute a trial within three months after the earlier of: (1) The submission of a patent owner preliminary response, (2) the waiver of filing a patent owner preliminary response, or (3) the expiration of the time period for filing a patent owner preliminary response. If the Office decides not to institute a trial, the petitioner may file a request for reconsideration of the Office's decision. It is anticipated that a request for reconsideration will require 80 hours of professional time to prepare and file, for a cost of $27,200. This estimate is based on the complexity of the issues and desirability to avoid time bars imposed by 35 U.S.C. 325(b).

Following institution of a trial, the parties may be authorized to file various motions, *e.g.,* motions to amend and motions for additional discovery. Where a motion is authorized, an opposition may be authorized, and where an opposition is authorized, a reply may be authorized. The procedures for filing a motion are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(5), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.221, and 42.223. The procedures for filing an opposition are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.207, and 42.220. The procedures for filing a reply are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(c), 42.51, 42.52, 42.53, 42.54, 42.63, and 42.65. As discussed previously, the Office estimates that the average covered business method patent review will have 8.89 motions, oppositions, and replies after institution.

The *AIPLA Report of the Economic Survey 2011* reported that the average cost in contested cases before the trial section of the Board prior to the priority phase was $322,000 per party. Because of the overlap of issues in patentability grounds, it is expected that the cost per motion will decline as more motions are filed in a proceeding. It is estimated that a motion, opposition, or reply in a derivation would cost $34,000, which is estimated by dividing the total public cost for all motions in current contested cases divided by the estimated number of motions in derivations under 35 U.S.C. 135, as amended. The cost of a motion, opposition, or reply in a covered business method patent review is estimated at $44,200 (including expert costs), reflecting the reduction in overlap between motions relative to derivation. Based on the work required to file and prepare such briefs, the Office considers the reported cost as a reasonable estimate.

After a trial has been instituted but prior to a final written decision, parties to a covered business method patent review may request an oral hearing. The procedure for filing requests for oral argument is proposed in § 42.70. The *AIPLA Report of the Economic Survey 2011* reported that the third quartile cost of an *ex parte* appeal with an oral argument is $12,000, while the third quartile cost of an *ex parte* appeal without an oral argument is $6,000. In view of the reported costs, which the Office finds reasonable, and the increased complexity of an oral hearing with multiple parties, it is estimated that the cost per party for oral hearings would be $6,800 or $800 more than the reported third quartile cost for an *ex parte* oral hearing.

Parties to a covered business method patent review may file requests to treat a settlement as business confidential, or file a request for adverse judgment. A written request to make a settlement agreement available may also be filed. The procedures to file requests that a settlement be treated as business confidential are proposed in § 42.74(b). The procedures to file requests for adverse judgment are proposed in § 42.73(b). The procedures to file requests to make a settlement agreement available are proposed in § 42.74(c)(2). It is anticipated that requests to treat a settlement as business confidential will require 2 hours of professional time or $680. It is anticipated that requests for adverse judgment will require 1 hour of professional time or $340. It is anticipated that requests to make a settlement agreement available will require 1 hour of professional time or $340. The requests to make a settlement agreement available will also require payment of a fee of $400 specified in proposed § 42.15(d).

Parties to a review proceeding may seek judicial review of the judgment of the Board. The procedures to file notices of judicial review of a Board decision, including notices of appeal and notices of election provided for in 35 U.S.C. 141, 142, 145, and 146, are proposed in §§ 90.1 through 90.3. The submission of a copy of a notice of appeal or a notice of election is anticipated to require 6 minutes of professional time at a cost of $34.

5. *Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Rules on Small Entities:*

Size of petitions and motions: The Office considered whether to apply a page limit and what an appropriate page limit would be. The Office does not currently have a page limit on *inter partes* reexamination requests. The *inter partes* reexamination requests from October 1, 2010 to June 30, 2011, averaged 246 pages. Based on the experience of processing *inter partes* reexamination requests, the Office finds that the very large size of the requests has created a burden on the Office that hinders the efficiency and timeliness of processing the requests, and creates a burden on patent owners. The quarterly reported average processing time from the filing of a request to the publication of a reexamination certificate ranged from 28.9 months to 41.7 months in fiscal year 2009, from 29.5 months to 37.6 months in fiscal year 2010, and from 31.9 to 38.0 months in fiscal year 2011. *See* Reexaminations—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.*

By contrast, the Office has a page limit on the motions filed in contested cases, except where parties are specifically authorized to exceed the limitation. The typical contested case proceeding is subject to a standing order that sets a 50 page limit for motions and oppositions on priority, a 15 page limit for miscellaneous motions (§ 41.121(a)(3)) and oppositions (§ 41.122), and a 25 page limit for other motions (§ 41.121(a)(2)) and oppositions to other motions. In typical proceedings, replies are subject to a 15 page limit if directed to priority, 5 page limit for miscellaneous issues, and 10 page limit for other motions. The average contested case was terminated in 10.1 months in fiscal year 2009, in 12 months in fiscal year 2010, and 9 months in fiscal year 2011. The percentage of contested cases terminated within 2 years was 93.7% in fiscal year 2009, 88.0% in fiscal year 2010, and 94.0% in fiscal year 2011. *See* BPAI Statistics—Performance Measures, *http://www.uspto.gov/ip/boards/bpai/stats/perform/index.jsp.*

Comparing the average time period for terminating a contested case, 10.0 to 12.0 months, with the average time period, during fiscal years 2009 through 2011, for completing an *inter partes* reexamination, 28.9 to 41.7 months,

indicates that the average interference takes from 24% (10.0/41.7) to 42% (12.0/28.9) of the time of the average *inter partes* reexamination. While several factors contribute to the reduction in time, limiting the size of the requests and motions is considered a significant factor. Proposed § 42.24 would provide page limits for petitions, motions, oppositions, and replies. 35 U.S.C. 326(b) provides considerations that are to be taken into account when prescribing regulations including the integrity of the patent system, the efficient administration of the Office, and the ability to complete timely the trials. The page limits proposed in these rules are consistent with these considerations.

Federal courts routinely use page limits in managing motions practice as ''[e]ffective writing is concise writing.'' *Spaziano* v. *Singletary,* 36 F.3d 1028, 1031 n.2 (11th Cir. 1994). Many district courts restrict the number of pages that may be filed in a motion including, for example, the District of Delaware, the District of New Jersey, the Eastern District of Texas, the Northern, Central, and Southern Districts of California, and the Eastern District of Virginia.

Federal courts have found that page limits ease the burden on both the parties and the courts, and patent cases are no exception. *Eolas Techs., Inc.* v. *Adobe Sys., Inc.,* No. 6:09–CV–446, at 1 (E.D. Tex. Sept. 2, 2010) (''The Local Rules' page limits ease the burden of motion practice on both the Court and the parties.''); *Blackboard, Inc.* v. *Desire2Learn, Inc.,* 521 F. Supp. 2d 575, 576 (E.D. Tex. 2007) (The parties ''seem to share the misconception, popular in some circles, that motion practice exists to require federal judges to shovel through steaming mounds of pleonastic arguments in Herculean effort to uncover a hidden gem of logic that will ineluctably compel a favorable ruling. Nothing could be farther from the truth.''); *Broadwater* v. *Heidtman Steel Prods., Inc.,* 182 F. Supp. 2d 705, 710 (S.D. Ill. 2002) (''Counsel are strongly advised, in the future, to not ask this Court for leave to file any memoranda (supporting or opposing dispositive motions) longer than 15 pages. The Court has handled complicated patent cases and employment discrimination cases in which the parties were able to limit their briefs supporting and opposing summary judgment to 10 or 15 pages.'' (Emphasis omitted)).

The Board's contested cases experience with page limits in motions practice is consistent with that of the federal courts. The Board's use of page limits has shown it to be beneficial without being unduly restrictive for the parties. Page limits have encouraged the parties to focus on dispositive issues, easing the burden of motions practice on the parties and on the Board.

The Board's contested cases experience with page limits is informed by its use of different approaches over the years. In the early 1990s, page limits were not routinely used for motions, and the practice suffered from lengthy and unacceptable delays. To reduce the burden on the parties and on the Board and thereby reduce the time to decision, the Board instituted page limits in the late 1990s for every motion. Page limit practice was found to be effective in reducing the burdens on the parties and improving decision times at the Board. In 2006, the Board revised the page limit practice and allowed unlimited findings of fact and generally limited the number of pages containing argument. Due to abuses of the system, the Board recently reverted back to page limits for the entire motion (both argument and findings of fact).

The Board's current page limits are consistent with the 25 page limits in the Northern, Central, and Southern Districts of California, and the Middle District of Florida and exceed the limits in the District of Delaware (20), the Northern District of Illinois (15), the District of Massachusetts (20), the Eastern District of Michigan (20), the Southern District of Florida (20), and the Southern District of Illinois (20).

In a typical proceeding before the Board, a party may be authorized to file a single motion for unpatentability based on prior art, a single motion for unpatentability based upon failure to comply with 35 U.S.C. 112, lack of written description, and/or enablement, and potentially another motion for lack of compliance with 35 U.S.C. 101, although a 35 U.S.C. 101 motion may be required to be combined with the 35 U.S.C. 112 motion. Each of these motions is currently limited to 25 pages in length, unless good cause is shown that the page limits are unduly restrictive for a particular motion.

A petition requesting the institution of a trial proceeding would be similar to motions currently filed with the Board. Specifically, petitions to institute a trial seek a final written decision that the challenged claims are unpatentable, where derivation is a form of unpatentability. Accordingly, a petition to institute a trial based on prior art would, under current practice, be limited to 25 pages, and by consequence, a petition raising unpatentability based on prior art and unpatentability under 35 U.S.C. 101 and/or 112 would be limited to 50 pages.

Under the proposed rules, a covered business method patent review petition would be based upon most grounds identified in 35 U.S.C. 321(b), *e.g.,* failure to comply with 35 U.S.C. 101, 102 (based on certain references), 103, and 112 (except best mode). Under current practice, a party would be limited to filing two or three motions, each limited to 25 pages, for a maximum of 75 pages. Where there is more than one motion for unpatentability based upon different statutory grounds, the Board's experience is that the motions contain similar discussions of technology and claim constructions. Such overlap is unnecessary where a single petition for unpatentability is filed. Thus, the proposed 70 page limit is considered sufficient in all but exceptional cases.

The proposed rule would provide that petitions to institute a trial must comply with the stated page limits, but may be accompanied by a motion that seeks to waive the page limits. The petitioner must show in the motion how a waiver of the page limits is in the interests of justice. A copy of the desired non-page limited petition must accompany the motion. Generally, the Board would decide the motion prior to deciding whether to institute the trial.

Current Board practice provides a limit of 25 pages for other motions and 15 pages for miscellaneous motions. The Board's experience is that such page limits are sufficient for the parties filing them and do not unduly burden the opposing party or the Board. Petitions to institute a trial would generally replace the current practice of filing motions for unpatentability, as most motions for relief are expected to be similar to the current interference miscellaneous motion practice. Accordingly, the proposed 15 page limit is considered sufficient for most motions but may be adjusted where the limit is determined to be unduly restrictive for the relief requested.

Proposed § 42.24(b) would provide page limits for oppositions filed in response to motions. Current contested cases practice provides an equal number of pages for an opposition as its corresponding motion. This is generally consistent with motions practice in federal courts. The proposed rule would continue the current practice.

Proposed § 42.24(c) would provide page limits for replies. Current contested cases practice provides a 15 page limit for priority motion replies, a 5 page limit for miscellaneous (procedural) motion replies, and a 10 page limit for all other motions. The proposed rule is consistent with current contested case practice for procedural

motions. The proposed rule would provide a 15 page limit for reply to petitions requesting a trial, which the Office believes is sufficient based on current practice. Current contested cases practice has shown that such page limits do not unduly restrict the parties and, in fact, have provided sufficient flexibility to parties to not only reply to the motion but also help to focus on the issues. Thus, it is anticipated that default page limits would minimize the economic impact on small entities by focusing on the issues in the trials.

The Leahy-Smith America Invents Act requires that the Director, in prescribing rules for covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings. *See* 35 U.S.C. 326(b). In view of the actual results of the duration of proceedings in *inter partes* reexamination (without page limits) and contested cases (with page limits), proposing procedures with reasonable page limits would be consistent with the objectives set forth in the Leahy-Smith America Invents Act. Based on our experience on the time needed to complete a non-page limited proceeding, the option of non-page limited proceedings was not adopted.

Fee Setting: 35 U.S.C. 321(a) requires the Director to establish fees to be paid by the person requesting the review in such amounts as the Director determines to be reasonable, considering the aggregate costs of the review. In contrast to current 35 U.S.C. 311(b) and 312(c), the Leahy-Smith America Invents Act requires the Director to establish more than one fee for reviews based on the total cost of performing the reviews, and does not provide for refund of any part of the fee when the Director determine that the review should not be initiated.

35 U.S.C. 322(a)(1) further requires that the fee established by the Director under 35 U.S.C. 321 accompany the petition on filing. Accordingly, in interpreting the fee setting authority in 35 U.S.C. 321(a), it is reasonable that the Director should set a number of fees for filing a petition based on the anticipated aggregate cost of conducting the review depending on the complexity of the review, and require payment of the fee upon filing of the petition.

Based on experience with contested cases and *inter partes* reexamination proceedings, the following characteristics of requests were considered as potential factors for fee setting as each would likely impact the cost of providing the new services. The Office also considered the relative difficulty in administrating each option in selecting the characteristics for which different fees should be paid for requesting review.

I. *Adopted Option.* Number of claims for which review is requested. The number of claims often impacts the complexity of the request and increases the demands placed on the deciding officials. *Cf. In re Katz Interactive Call Processing Patent Litig.,* 639 F.3d 1303, 1309 (Fed. Cir. 2011) (limiting number of asserted claims is appropriate to efficiently manage a case). Moreover, the number of claims for which review is requested can be easily determined and administered, which avoids delays in the Office and the impact on the economy or patent system that would occur if an otherwise meritorious request is refused due to improper fee payment. Any subsequent petition would be time barred in view 35 U.S.C. 325.

II. *Alternative Option I.* Number of grounds for which review is requested. The Office has experience with large numbers of cumulative grounds being presented in *inter partes* reexaminations which often add little value to the proceedings. Allowing for a large number of grounds to be presented on payment of an additional fee(s) is not favored. Determination of the number of grounds in a request may be contentious and difficult and may result in a large amount of high-level petition work. As such, the option would have a negative impact on small entities. Moreover, interferences instituted in the 1980s and early 1990s suffered from this problem as there was no page limit for motions and the parties had little incentive to focus on the issues for decision. The resulting interference records were often a collection of disparate issues and evidence. This led to lengthy and unwarranted delays in deciding interference cases as well as increased costs for parties and the Office. Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete the instituted proceedings.

III. *Alternative Option II.* Pages of argument. The Office has experience with large requests in *inter partes* reexamination in which the merits of the proceedings could have been resolved in a shorter request. Allowing for unnecessarily large requests on payment of an additional fee(s) is not favored. Moreover, determination of what should be counted as ''argument'' as compared with ''evidence'' has often proven to be contentious and difficult as administered in the current *inter partes* reexamination appeal process.

In addition, the trial section of the Board recently experimented with motions having a fixed page limit for the argument section and an unlimited number of pages for the statement of facts. Unlimited pages for the statement of facts led to a dramatic increase in the number of alleged facts and pages associated with those facts. For example, one party used approximately 10 pages for a single ''fact'' that merely cut and pasted a portion of a declarant's cross-examination. Based upon the trial section's experience with unlimited pages of facts, the Board recently reverted back to a fixed page limit for the entire motion (argument and facts). Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

IV. *Alternative Option III.* The Office considered an alternative fee setting regime in which fees would be charged at various steps in the review process, a first fee on filing of the petition, a second fee if instituted, a third fee on filing a motion in opposition to amended claims, *etc.* The alternative fee setting regime would hamper the ability of the Office to complete timely reviews, would result in dismissal of pending proceedings with patentability in doubt due to non-payment of required fees by third parties, and would be inconsistent with 35 U.S.C. 322 that requires the fee established by the Director be paid at the time of filing the petition. Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

V. *Alternative Option IV.* The Office considered setting reduced fees for small and micro entities and to provide refunds if a review is not instituted. The Office may set the fee to recover the cost

of providing the services under 35 U.S.C. 41(d)(2)(a). Fees set under this authority are not reduced for small entities, *see* 35 U.S.C. 42(h)(1), as amended. Moreover, the Office does not have authority to refund fees that were not paid by mistake or in excess of that owed. *See* 35 U.S.C. 42(d).

Discovery: The Office considered a procedure for discovery similar to the one available during district court litigation. Discovery of that scope has been criticized sharply, particularly when attorneys use discovery tools as tactical weapons, which hinder the ''just, speedy, and inexpensive determination of every action and proceedings.'' *See* Introduction to *An E-Discovery Model Order* available at *http://www.cafc.uscourts.gov/images/stories/announcements/Ediscovery_Model_Order.pdf.* Accordingly, this alternative would have been inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

Additional discovery increases trial costs and increases the expenditures of time by the parties and the Board. To promote effective discovery, the proposed rule would require a showing of good cause to authorize additional requested discovery. To show good cause, a party must make a particular and specific demonstration of fact. The moving party must also show that it was fully diligent in seeking discovery, and that there is no undue prejudice to the non-moving party.

The Office has proposed a default scheduling order to provide limited discovery as a matter of right and also the ability to seek additional discovery on a case-by-case basis. In weighing the need for additional discovery, should a request be made, the economic impact on the opposing party would be considered which would tend to limit additional discovery where a party is a small entity.

Pro Hac Vice: The Office considered whether to allow counsel to appear *pro hac vice.* In certain cases, highly skilled, but non-registered, attorneys have appeared satisfactorily before the Board in contested cases. The Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause. Proceedings before the Office can be technically complex. Consequently, the grant of a motion to appear *pro hac vice* is a discretionary action taking into account the specifics of the proceedings. Similarly, the revocation of *pro hac vice* is a discretionary action taking into account various factors, including incompetence, unwillingness to abide by the Office's Rules of Professional Conduct, prior findings of misconduct before the Office in other proceedings, and incivility.

The Board's past practice has required the filing of a motion by a registered patent practitioner seeking *pro hac vice* representation based upon a showing of: (1) How qualified the unregistered practitioner is to represent the party in the proceeding when measured against a registered practitioner, and, (2) whether the party has a genuine need to have the particular unregistered practitioner represent it during the proceeding. This practice has proven effective in the limited number of contested cases where such requests have been granted. The proposed rule, if adopted, would allow for this practice in the new proceedings authorized by the Leahy-Smith America Invents Act.

The proposed rules would provide a limited delegation to the Board under 35 U.S.C. 2(b)(2) and 32 to regulate the conduct of counsel in Board proceedings. The proposed rule would delegate to the Board the authority to conduct counsel disqualification proceedings while the Board has jurisdiction over a proceeding. The rule would also delegate to the Chief Administrative Patent Judge the authority to make final a decision to disqualify counsel in a proceeding before the Board for the purposes of judicial review. This delegation would not derogate from the Director the prerogative to make such decisions, nor would it prevent the Chief Administrative Patent Judge from further delegating authority to an administrative patent judge.

The Office considered broadly permitting practitioners not registered to practice by the Office to represent parties in trial as well as categorically prohibiting such practice. A prohibition on the practice would be inconsistent with the Board's experience, and more importantly, might result in increased costs particularly where a small entity has selected its district court litigation team for representation before the Board and has a patent review filed after litigation efforts have commenced. Alternatively, broadly making the practice available would create burdens on the Office in administering the trials and in completing the trial within the established time frame, particularly if the selected practitioner does not have the requisite skill. In weighing the desirability of admitting a practitioner *pro hac vice,* the economic impact on the party in interest would be considered which would tend to increase the likelihood that a small entity could be represented by a non-registered practitioner. Accordingly, the alternatives to eliminate *pro hac vice* practice or to permit it more broadly would have been inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

Threshold for Instituting a Review: The Office considered whether the threshold for instituting a review could be set as low as or lower than the threshold for *ex parte* reexamination. This alternative could not be adopted in view of the statutory requirements in 35 U.S.C. 324.

Default Electronic Filing: The Office considered a paper filing system and a mandatory electronic filing system (without any exceptions) as alternatives to the proposed requirement that all papers are to be electronically filed, unless otherwise authorized.

Based on the Office's experience, a paper based filing system increases delay in processing papers, delay in public availability, and the chance that a paper may be misplaced or made available to an improper party if confidential. Accordingly, the alternative of a paper based filing system would have been inconsistent with objectives of the Leahy-Smith America Invent Act that the Director, in prescribing rules for the covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

An electronic filing system (without any exceptions) that is rigidly applied would result in unnecessary cost and burdens, particularly where a party lacks the ability to file electronically. By contrast, if the proposed option is adopted, it is expected that the entity size and sophistication would be considered in determining whether alternative filing methods would be authorized.

6. *Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rules:*

37 CFR 1.99 provides for the submission of information after publication of a patent application during examination by third parties.

37 CFR 1.171–1.179 provide for applications to reissue a patent to correct errors, including where a claim in a patent is overly broad.

37 CFR 1.291 provides for the protest against the issuance of a patent during examination.

37 CFR 1.321 provides for the disclaimer of a claim by a patentee.

37 CFR 1.501 and 1.502 provide for *ex parte* reexamination of patents. Under these rules, a person may submit to the Office prior art consisting of patents or printed publications that are pertinent to the patentability of any claim of a patent, and request reexamination of any claim in the patent on the basis of the cited prior art patents or printed publications. Consistent with 35 U.S.C. 302–307, *ex parte* reexamination rules provide a different threshold for initiation, require the proceeding to be conducted by an examiner with a right of appeal to the Patent Trial and Appeal Board, and allow for limited participation by third parties.

37 CFR 1.902–1.997 provide for *inter partes* reexamination of patents. Similar to *ex parte* reexamination, *inter partes* reexamination provides a procedure in which a third party may request reexamination of any claim in a patent on the basis of the cited prior art patents and printed publication. The *inter partes* reexamination practice will be eliminated, except for requests filed before the effective date, September 16, 2012. *See* § 6(c)(3)(C) of the Leahy-Smith America Invents Act.

Other countries have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)). Nevertheless, the Office believes that there are no other duplicative or overlapping foreign rules.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

Based on the petition and other filing requirements for initiating a review proceeding, the USPTO initially estimates the burden of the proposed rules on the public to be $22,761,410 in fiscal year 2013, which represents the sum of the estimated total annual (hour) respondent cost burden ($20,405,610) plus the estimated total annual non-hour respondent cost burden ($2,355,800) provided in Part O, Section II, of this notice, *infra.*

The USPTO expect several benefits to flow from the Leahy-Smith America Invents Act and these proposed rules. It is anticipated that the proposed rules will reduce the time for reviewing patents at the USPTO. Specifically, 35 U.S.C. 326(a) provides that the Director prescribe regulations requiring a final determination by the Board within one year of initiation, which may be extended for up to six months for good cause. In contrast, currently for *inter partes* reexamination, the average time from the filing to the publication of a certificate ranged from 28.9 to 41.7 months during fiscal years 2009–2011. *See* Reexaminations—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.*

Likewise, it is anticipated that the proposed rules will minimize duplication of efforts. In particular, the Leahy-Smith America Invents Act provides more coordination between district court infringement litigation and covered business method patent review to reduce duplication of efforts and costs.

The *AIPLA Report of the Economic Survey 2011* reports that the total cost of patent litigation where the damages at risk are less than $1,000,000 average $916,000, where the damages at risk are between $1,000,000 and $25,000,000 average $2,769,000, and where the damages at risk exceed $25,000,000 average $6,018,000. There may be a significant reduction in overall burden if, as intended, the Leahy-Smith America Invents Act and the proposed rules reduce the overlap between review at the USPTO of issued patents and validity determination during patent infringement actions. Data from the United States district courts reveals that 2,830 patent cases were filed in 2006, 2,896 in 2007, 2,909 in 2008, 2,792 in 2009, and 3,301 in 2010. *See* U.S. Courts, Judicial Business of the United States Courts, *www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2010/appendices/C02ASep10.pdf* (last visited Nov. 11, 2011) (hosting annual reports for 1997 through 2010). Thus, the Office estimates that no more than 3,300 patent cases (the highest number of yearly filings between 2006 and 2010 rounded to the nearest 100) are likely to be filed annually. The aggregate burden estimate above ($22,761,410) was not offset by a reduction in burden based on improved coordination between district court patent litigation and the new *inter partes* review proceedings.

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996). This rulemaking

carries out a statute designed to lessen litigation. *See* H.R. Rep. No. 112–98, at 45–48.

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501–1571.

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321–4370h.

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this notice has been submitted to OMB under OMB control number 0651–00xx. In the Notice ''Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,'' RIN 0651–AC70, the information collection for all of the new trials authorized by the Leahy-Smith America Invents Act were provided. In the Notice ''Changes to Implement Post-Grant Review Proceedings,'' RIN 0651–AC72, the information collection for post-grant review and covered business method patent review combined authorized by the Leahy-Smith America Invents Act were provided. This notice also provides the subset of burden created by the covered business method patent review provisions. The proposed collection will be available at the OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

The USPTO is submitting the information collection to OMB for its review and approval because this notice of proposed rulemaking will add the following to a collection of information:

(1) Petitions to institute a covered business method patent review (§§ 42.5, 42.6, 42.8, 42.11, 42.13, 42.20, 42.21, 42.22, 42.24(a)(3), 42.63, 42.65, 42.203, 42.205, and 42.302 through 42.304);

(2) motions (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(5), 42.51 through 42.54, 42.63, 42.64, 42.65, 42.221, 42.123, and 42.223);

(3) oppositions (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.207, and 42.220);

(4) replies provided for in 35 U.S.C. 321–329 (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(c), 42.51, 42.52, 42.53, 42.54, 42.63, and 42.65).

The proposed rules also permit filing requests for oral argument (§ 42.70) provided for in 35 U.S.C. 326(a)(10), requests for rehearing (§ 42.71(c)), requests for adverse judgment (§ 42.73(b)), and requests that a settlement be treated as business confidential (§ 42.74(b)) provided for in 35 U.S.C. 327.

I. Abstract: The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, issue applications as patents.

Chapter 32 of title 35 U.S.C. in effect on September 16, 2012, provides for post-grant review proceedings allowing third parties to petition the USPTO to review the patentability of an issued patent under any ground authorized under 35 U.S.C. 282(b)(2). If a trial is initiated by the USPTO based on the petition, as authorized by the USPTO, additional motions may be filed by the petitioner. A patent owner may file a response to the petition and if a trial is instituted, as authorized by the USPTO, may file additional motions.

Section 18 of the Leahy-Smith America Invents Act provides for a transitional program for covered business method patents which will employ the standards and procedures of the post-grant review proceeding with a few exceptions.

In estimating the number of hours necessary for preparing a petition to institute a covered business method patent review, the USPTO considered the estimated cost of preparing a request for *inter partes* reexamination ($46,000), the median billing rate ($340/hour), and the observation that the cost of *inter partes* reexamination has risen the fastest of all litigation costs since 2009 in the *AIPLA Report of the Economic Survey 2011*. Since additional grounds are provided in covered business method patent review, the Office estimates the cost of preparing a petition to institute a review will be 33.333% more than the estimated cost of preparing a request for *inter partes* reexamination, or $61,333.

In estimating the number of hours necessary for preparing motions after instituting and participating in the review, the USPTO considered the *AIPLA Report of the Economic Survey 2011* which reported the average cost of a party to a two-party interference to the end of the preliminary motion phase ($322,000) and inclusive of all costs ($631,000). The Office considered that the preliminary motion phase is a good proxy for patentability reviews since that is the period of current contested cases before the trial section of the Board where most patentability motions are currently filed.

The USPTO also reviewed recent contested cases before the trial section of the Board to make estimates on the average number of motions for any matter including priority, the subset of those motions directed to non-priority issues, the subset of those motions

directed to non-priority patentability issues, and the subset of those motions directed to patentability issues based on a patent or printed publication on the basis of 35 U.S.C. 102 or 103. The review of current contested cases before the trial section of the Board indicated that approximately 15% of motions were directed to prior art grounds, 18% of motions were directed to other patentability grounds, 27% were directed to miscellaneous issues, and 40% were directed to priority issues. It was estimated that the cost per motion to a party in current contested cases before the trial section of the Board declines because of overlap in subject matter, expert overlap, and familiarity with the technical subject matter. Given the overlap of subject matter, a proceeding with fewer motions will have a somewhat less than proportional decrease in costs since the overlapping costs will be spread over fewer motions.

It is estimated that the cost of an *inter partes* review would be 60% of the cost of current contested cases before the trial section of the Board to the end of the preliminary motion period. An *inter partes* review should have many fewer motions since only one party will have a patent that is the subject of the proceeding (compared with each party having at least a patent or an application in current contested cases before the trial section of the Board). Moreover, fewer issues can be raised since *inter partes* review will not have priority-related issues that must be addressed in current contested cases before the trial section of the Board. Consequently, a 60% weighting factor should capture the typical costs of an *inter partes* review.

It is estimated that the cost of a covered business method patent review would be 75% of the cost of current contested cases before the trial section of the Board to the end of the preliminary motion period. A covered business method patent review should have many fewer motions since only one party will have a patent that is the subject of the proceeding (compared with each party having at least a patent or an application in current contested cases before the trial section of the Board). Moreover, fewer issues can be raised since covered business method patent reviews will not have the priority-related issues that must be addressed in current contested cases before the trial section of the Board before the priority phase. Again, a 75% weighting factor should capture the typical costs of a covered business method patent review.

The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burdens for the covered business method patent review provisions. Included in this estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the proposed changes in this notice of proposed rulemaking is to implement the changes to Office practice necessitated by §§ 6(d) and 18 of the Leahy-Smith America Invents Act.

The public uses this information collection to request review and derivation proceedings and to ensure that the associated fees and documentation are submitted to the USPTO.

II. Data

Needs and Uses: The information supplied to the USPTO by a petition to institute a review as well as the motions authorized following the institution is used by the USPTO to determine whether to initiate a review under 35 U.S.C. 324 and to prepare a final decision under 35 U.S.C. 328.

OMB Number: 0651–00xx.

Title: Patent Review and Derivation Proceedings.

Form Numbers: None.

Type of Review: New Collection.

Likely Respondents/Affected Public: Individuals or households, businesses or other for profit, not-for-profit institutions, farms, Federal Government, and state, local, or tribal governments.

Estimated Number of Respondents/Frequency of Collection: 100 respondents and 515 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public from 0.1 to 180.4 hours to gather the necessary information, prepare the documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 60,016.5 hours per year.

Estimated Total Annual (Hour) Respondent Cost Burden: $20,405,610 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of $340 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for this collection will be approximately $20,405,610 per year (60,016.5 hours per year multiplied by $340 per hour).

Estimated Total Annual Non-hour Respondent Cost Burden: $2,355,800 per year. There are no capital start-up or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees. There are filing fees associated with petitions for covered business method patent review and for requests to treat a settlement as business confidential. The total fees for this collection are calculated in the accompanying table. The USPTO estimates that the total fees associated with this collection will be approximately $2,355,800 per year.

Therefore, the total estimated cost burden in fiscal year 2013 is estimated to be $22,761,410 (the sum of the estimated total annual (hour) respondent cost burden ($20,405,610) plus the estimated total annual non-hour respondent cost burden ($2,355,800)).

Item	Estimated time for response hours	Estimated annual responses	Estimated annual burden hours
Petition for covered business method patent review	180.4	50	9,020
Reply to initial covered business method patent review	100	45	4,500
Request for Reconsideration	80	14	1,120
Motions, replies and oppositions after institution in covered business method patent review	130	342	44,460
Request for oral hearing	20	45	900
Request to treat a settlement as business confidential	2	2	4
Request for adverse judgment, default adverse judgment or settlement	1	10	10
Request to make a settlement agreement available	1	2	2
Notice of judicial review of a Board decision (*e.g.,* notice of appeal under 35 U.S.C. 142)	0.1	5	0.5

Item	Estimated time for response hours	Estimated annual responses	Estimated annual burden hours
Totals		515	60,016.5

Item	Estimated annual responses	Fee amount	Estimated annual filing costs
Petition for covered business method patent review	50	$47,100	$2,355,000
Reply to covered business method patent review petition	45	0	0
Request for Reconsideration	14	0	0
Motions, replies and oppositions after initiation in covered business method patent review	342	0	0
Request for oral hearing	45	0	0
Request to treat a settlement as business confidential	2	0	0
Request for adverse judgment, default adverse judgment or settlement	10	0	0
Request to make a settlement agreement available	2	400	800
Notice of judicial review of a Board decision (*e.g.,* notice of appeal under 35 U.S.C. 142)	5	0	0
Totals	515		2,355,800

III. Solicitation

The agency is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Interested persons are requested to send comments regarding this information collection by April 10, 2012, to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Nicholas A. Fraser, Desk Officer for the United States Patent and Trademark Office, and via email at *nfraser@omb.eop.gov*; and (2) The Board of Patent Appeals and Interferences by electronic mail message over the Internet addressed to: *TPCBMP_Rules@uspto.gov*, or by mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Judge Michael Tierney, Covered Business Method Patent Review Proposed Rules.''

Notwithstanding any other provision of law, no person is 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 currently valid OMB control number.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

Proposed Amendments to the Regulatory Text

For the reasons stated in the preamble, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office propose to amend 37 CFR part 42 as proposed to be added in the February 9, 2012, issue of the **Federal Register** as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

1. The authority citation for 37 CFR part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326 and Leahy-Smith America Invents Act, Pub. L. 112–29, sections 6(c), 6(f), and 18, 125 Stat. 284, 304, 311, and 329 (2011).

2. A new subpart D is added to read as follows:

Subpart D—Transitional Program for Covered Business Method Patents

Sec.
42.300 Procedure; pendency.
42.301 Definitions.
42.302 Who may petition for a covered business method patent review.
42.303 Time for filing.
42.304 Content of petition.

§ 42.300 Procedure; pendency.

(a) A covered business method patent review is a trial subject to the procedures set forth in subpart A of this part and is also subject to the post-grant review procedures set forth in subpart C except for §§ 42.200, 42.201, 42.202, and 42.204.

(b) A claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.

(c) A covered business method patent review proceeding shall be administered such that pendency before the Board after institution is normally no more than one year. The time can be extended by up to six months by the Chief Administrative Patent Judge for good cause.

(d) The rules in this subpart are effective until September 15, 2020, except that the rules shall continue to apply to any petition for a covered business method patent review filed before the date of repeal.

§ 42.301 Definitions.

In addition to the definitions in § 42.2, the following definitions apply to proceedings under this subpart:

(a) *Covered business method patent* means a patent that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions.

(b) [Reserved].

§ 42.302 Who may petition for a covered business method patent review.

(a) A petitioner may not file with the Office a petition to institute a covered

business method patent review of the patent unless the petitioner, the petitioner's real party in interest, or a privy of the petitioner has been sued for infringement of the patent or has been charged with infringement under that patent.

(b) A petitioner may not file a petition to institute a covered business method patent review of the patent where the petitioner, the petitioner's real party in interest, or a privy of the petitioner is estopped from challenging the claims on the grounds identified in the petition.

§ 42.303 Time for filing.

A petition requesting a covered business method patent review may be filed any time except during the period in which a petition for a post-grant review of the patent would satisfy the requirements of 35 U.S.C. 321(c).

§ 42.304 Content of petition.

In addition to any other notices required by subparts A and C of this part, a petition must request judgment against one or more claims of a patent identified by patent number. In addition to the requirements of § 42.22, the petition must set forth:

(a) *Grounds for standing.* The petitioner must demonstrate that the patent for which review is sought is a covered business method patent, and that the petitioner meets the eligibility requirements of § 42.302.

(b) *Identification of challenge.* Provide a statement of the precise relief requested for each claim challenged. The statement must identify the following:

(1) The claim;

(2) The specific statutory grounds permitted under paragraph (2) or (3) of 35 U.S.C. 282(b) on which the challenge to the claim is based;

(3) How the challenged claim is to be construed. Where the claim to be construed contains a means-plus-function or step-plus-function limitation as permitted under 35 U.S.C. 112, paragraph 6, the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function;

(4) How the construed claim is unpatentable under the statutory grounds identified in paragraph (b)(2) of this section. Where the grounds for unpatentability are based on prior art, the petition must specify where each element of the claim is found in the prior art. For all other grounds of unpatentability, the petition must identify the specific part of the claim that fails to comply with the statutory grounds raised and state how the identified subject matter fails to comply with the statute; and

(5) The exhibit number of supporting evidence relied upon to support the challenge and state the relevance of the evidence to the challenge raised including identifying specific portions of the evidence that support the challenge. The Board may exclude or give no weight to evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.

(c) A motion may be filed that seeks to correct a mistake in the petition where the mistake is of a clerical or typographical nature. The grant of such a motion does not change the filing date of the petition.

Dated: January 31, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–2532 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2011–0087]

RIN 0651–AC75

Transitional Program for Covered Business Method Patents—Definition of Technological Invention

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes a new rule to implement the provision of the Leahy-Smith America Invents Act that requires the Office to issue regulations for determining whether a patent is for a technological invention in a transitional post-grant review proceeding for covered business method patents. The provision of the Leahy-Smith America Invents Act will take effect on September 16, 2012, one year after the date of enactment. The provision and any regulations issued under the provision will be repealed on September 16, 2020, with respect to any new petitions under the transitional program.

DATES: The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before April 10, 2012 to ensure consideration.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *TPCBMP_Definition@uspto.gov*. Comments may also be submitted by postal mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Judge Michael Tierney, Covered Business Method Patent Review Proposed Definition for Technological Invention.''

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. *See* the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Board of Patent Appeals and Interferences, currently located in Madison East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Sally Medley, Administrative Patent Judge, Robert Clarke, Administrative Patent Judge, Michael Tierney, Lead Administrative Patent Judge, and Joni Chang, Administrative Patent Judge, Board of Patent Appeals and Interferences, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION: On September 16, 2011, the Leahy-Smith America Invents Act was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)). The purpose of the Leahy-Smith America Invents Act and the proposed regulations is to establish a more

efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs. The preamble of this notice sets forth in detail the definition of technological invention that the Board will use in conducting transitional covered business method patent review proceedings. The USPTO is engaged in a transparent process to create a timely, cost-effective alternative to litigation. Moreover, the rulemaking process is designed to ensure the integrity of the trial procedures. *See* 35 U.S.C. 326(b). The proposed rules would provide a definition of technological invention that the Board will use in conducting transitional covered business method review proceedings.

Section 18 of the Leahy-Smith America Invents Act provides that the Director may institute a transitional proceeding only for a patent that is a covered business method patent. Section 18(d)(1) of the Leahy-Smith America Invents Act specifies that a covered business method patent is a patent that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions. Section 18(d)(2) provides that the Director will issue regulations for determining whether a patent is for a technological invention. This rulemaking provides regulations for determining whether a patent is for a technological invention. The Leahy-Smith America Invents Act provides that the transitional program for the review of covered business method patents will take effect on September 16, 2012, one year after the date of enactment, and applies to any covered business method patent issued before, on, or after September 16, 2012. Section 18 of the Leahy-Smith America Invents Act and the regulations issued under § 18 will be repealed on September 16, 2020. Section 18 and the regulations issued will continue to apply after September 16, 2020, to any petition for a transitional proceeding that is filed before September 16, 2020.

Discussion of Specific Rules

This notice proposes a new rule to implement the provisions of Section 18(d)(2) of the Leahy-Smith America Invents Act that provides that the Director will issue regulations for determining whether a patent is for a technological invention. A separate notice proposes new rules to implement the provisions of the Leahy-Smith America Invents Act for the transitional program for covered business method patents (RIN 0651–AC73). The separate notice proposes to add a new subpart D to 37 CFR part 42 to provide rules specific to transitional post-grant review of covered business method patents, including the definition for covered business method patent in proposed § 42.301(a).

Additionally, the Office in a separate rulemaking is proposing to add part 42, including subpart A, (RIN 0651–AC70) that would include a consolidated set of rules relating to Board trial practice. More specifically, the proposed subpart A of part 42 would set forth the policies, practices, and definitions common to all trial proceedings before the Board. Furthermore, the Office in separate rulemakings is proposing to add a new subpart B to 37 CFR part 42 (RIN 0651–AC71) to provide rules specific to *inter partes* review, a new subpart C to 37 CFR part 42 (RIN 0651–AC72) to provide rules specific to post-grant review, and a new subpart E to 37 CFR part 42 (0651–AC74) to provide rules specific to derivation. The notices of proposed rulemaking are available on the USPTO Internet Web site at *www.uspto.gov.*

Pursuant to § 18(d)(2) of the Leahy-Smith America Invents Act, the Office is proposing the definition of a technological invention in this rulemaking. This notice proposes to add the definition of technological invention to new subpart D of 37 CFR 42, specifically to proposed § 42.301(b).

Title 37 of the Code of Federal Regulations, Part 42, Subpart D, the definition for technological invention is proposed to be added to Section 42.301 as follows:

Section 42.301: Proposed § 42.301(b) would set forth the definition for technological invention for covered business method patent review proceedings. The proposed definition of technological invention would provide that in determining whether a patent is for a technological invention the following will be considered on a case-by-case basis: Whether the claimed subject matter as a whole (1) recites a technological feature that is novel and unobvious over the prior art; and (2) solves a technical problem using a technical solution. The Office recognizes that, in prescribing a regulation to define technological invention, the Office must consider the efficient administration of the proceedings by the Office, and its ability to timely complete them, consistent with 35 U.S.C. 326(b).

The proposed definition is consistent with the legislative history of the Leahy-Smith America Invents Act. *See, e.g.,* 157 Cong. Rec. S1364 (daily ed. Mar. 8, 2011) (statement of Sen. Schumer) (''The 'patents for technological inventions' exception only excludes those patents whose novelty turns on a technological innovation over the prior art and are concerned with a technical problem which is solved with a technical solution and which requires the claims to state the technical features which the inventor desires to protect.''); 157 Cong. Rec. H4497 (daily ed. June 23, 2011) (statement of Rep. Smith) (''Patents for technological inventions are those patents whose novelty turns on a technological innovation over the prior art and are concerned with a technical problem which is solved with a technical solution.''); 157 Cong. Rec. S5428 (daily ed. Sept. 8, 2011) (statement of Sen. Coburn) (''Patents for technological inventions are those patents whose novelty turns on a technological innovation over the prior art and are concerned with a technical problem which is solved with a technical solution.'').

Rulemaking Considerations

A. Administrative Procedure Act (APA): This notice proposes rules of practice concerning the procedure for requesting a covered business method patent review, and the trial process after initiation of such a review. The changes being proposed in this notice do not change the substantive criteria of patentability. These proposed changes involve interpretive rules. *See Cooper Tech. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (explaining that ''a rule that merely clarifies or explains existing law or regulations is 'interpretive' '' and holding USPTO's rules implementing *inter partes* reexamination proceedings to be interpretive rules not subject to the notice and comment requirements of the Administrative Procedures Act); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.SC. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'')

(quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these changes and the Initial Regulatory Flexibility Act analysis, below, for comment as it seeks the benefit of the public's views on the Office's proposed implementation of these provisions of the Leahy-Smith America Invents Act.

B. Regulatory Flexibility Act: The Office estimates that 50 petitions for covered business method patent review will be filed in fiscal year 2013. This will be the first fiscal year in which the review proceeding will be available for an entire fiscal year.

The estimated number of covered business method patent review petitions is based on the number of *inter partes* reexamination requests filed in fiscal year 2011 for patents having an original classification in class 705 of the United States Patent Classification System. Class 705 is the classification for patents directed to data processing in the following areas: Financial, business practice, management, or cost/price determination. *See http://www.uspto.gov/web/patents/classification/uspc705/sched705.pdf.*

The following is the class definition and description for Class 705:

This is the generic class for apparatus and corresponding methods for performing *data processing* operations, in which there is a significant change in the data or for performing *calculation operations* wherein the apparatus or method is uniquely designed for or utilized in the *practice,* administration, or management of an *enterprise,* or in the processing of financial data.

This class also provides for apparatus and corresponding methods for performing *data processing* or *calculating operations* in which a charge for goods or services is determined.

This class additionally provides for subject matter described in the two paragraphs above in combination with cryptographic apparatus or method.

Subclasses 705/300–348 were established prior to complete reclassification of all project documents. Documents that have not yet been reclassified have been placed in 705/1.1. Until reclassification is finished a complete search of 705/300–348 should include a search of 705/1.1. Once the project documents in 705/1.1 have been reclassified they will be moved to the appropriate subclasses and this note will be removed.

Scope of the Class

1. The *arrangements* in this class are generally used for problems relating to administration of an organization, commodities or financial transactions.

2. Mere designation of an arrangement as a ''business machine'' or a document as a ''business form'' or ''business chart'' without any particular business function will not cause classification in this class or its subclasses.

3. For classification herein, there must be significant claim recitation of the data processing system or calculating computer and only nominal claim recitation of any external art environment. Significantly claimed apparatus external to this class, claimed in combination with apparatus under the class definition, which perform data processing or calculation operations are classified in the class appropriate to the external device unless specifically excluded therefrom.

4. Nominally claimed apparatus external to this class in combination with apparatus under the class definition is classified in this class unless provided for in the appropriate external class.

5. In view of the nature of the subject matter included herein, consideration of the classification schedule for the diverse art or environment is necessary for proper search.

See Classification Definitions (Feb. 2011) available at *http://www.uspto.gov/web/patents/classification/uspc705/defs705.htm.*

Accordingly, patents subject to covered business method patent review are anticipated to be typically classifiable in Class 705. It is anticipated that the number of patents in Class 705 that do not qualify as covered business method patents would approximate the number of patents classified in other classes that do qualify.

The Office received 20 requests for *inter partes* reexamination of patents classified in Class 705 in fiscal year 2011. The Office in estimating the number of petitions for covered business method patent review to be higher than 20 requests due to an expansion of the grounds for which review may be requested including subject matter eligibility grounds, the greater coordination with litigation, and the provision that patents will be eligible for the proceeding regardless of filing date of the application which resulted in the patent.

The Office has reviewed the entity status of patents for which *inter partes* reexamination was requested from October 1, 2000, to September 23, 2011. This data only includes filings granted a filing date rather than filings in which a request was received. The first *inter partes* reexamination was filed on July 27, 2001. A summary of that review is provided in Table 1 below. As shown by Table 1, patents known to be owned by a small entity represented 32.79% of patents for which *inter partes* reexamination was requested. Based on an assumption that the same percentage of patents owned by small entities will be subject to covered business method patent review, it is estimated that 16 petitions for covered business method patent review would be filed to seek review of patents owned by a small entity in fiscal year 2013, the first full fiscal year that these proceedings will be available.

TABLE 1—INTER PARTES REEXAMINATION REQUESTS FILED WITH PARENT ENTITY TYPE *

Fiscal year	*Inter partes* reexamination requests filed	Number filed where parent patent is small entity type	Percent small entity type of total
2011	329	123	37.39
2010	255	94	36.86
2009	240	62	25.83
2008	155	52	33.55
2007	127	35	27.56
2006	61	17	27.87
2005	59	18	30.51
2004	26	5	19.23
2003	21	12	57.14
2002	4	1	25.00
2001	1	0	0.00
Totals	1,278	419	32.79

* Small entity status determined by reviewing preexamination small entity indicator for the parent patent.

Based on the number of patents issued during fiscal years 1995 through 1999 that paid the small entity third stage maintenance fee, the number of patents issued during fiscal years 2000 through 2003 that paid the small entity second stage maintenance fee, the number of patents issued during fiscal years 2004 through 2007 that paid the first stage maintenance fee, and the number of patents issued during fiscal years 2008 through 2011 that paid a small entity issue fee, there are no less than 375,000 patents owned by small entities in force as of October 1, 2011.

Furthermore, the Office recognizes that there would be an offset to this number for patents that expire earlier than 20 years from their filing date due to a benefit claim to an earlier application or due to a filing of a terminal disclaimer. The Office likewise recognizes that there would be an offset in the opposite manner due to the accrual of patent term extension and adjustment. The Office, however, does not maintain data on the date of expiration by operation of a terminal disclaimer. Therefore, the Office has not adjusted the estimate of 375,000 patents owned by small entities in force as of October 1, 2011. While the Office maintains information regarding patent term extension and adjustment accrued by each patent, the Office does not collect data on the expiration date of patents that are subject to a terminal disclaimer. As such, the Office has not adjusted the estimated of 375,000 patents owned by small entities in force as of October 1, 2011, for accrual of patent term extension and adjustment, because in view of the incomplete terminal disclaimer data issue, would be incomplete and any estimate adjustment would be administratively burdensome. Thus, it is estimated that the number of small entity patents in force in fiscal year 2013 will be at least 375,000.

Based on the estimated number of patents in force, the number of small entity owned patents impacted by covered business method patent review in fiscal year 2013 (16 patents) would be less than 0.005% (16/375,000) of all patents in force that are owned by small entities. The USPTO nonetheless has undertaken an Initial Regulatory Flexibility Act Analysis of the proposed rule.

1. *Description of the Reasons That Action by the Office Is Being Considered:* On September 16, 2011, the Leahy-Smith America Invents Act was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)). Section 18 of the Leahy-Smith America Invents Act provides for a transitional program for covered business method patents which will employ the standards and procedures of the post-grant review proceeding with a few exceptions. For the implementation, § 6(f) of the Leahy-Smith America Invents Act requires that the Director issue regulations to carry out chapter 32 of title 35, United States Code, within one year after the date of enactment. Public Law 112–29, § 6(f), 125 Stat. 284, 311 (2011).

2. *Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rules:* The proposed rules seek to implement covered business method patent review as authorized by the Leahy-Smith America Invents Act. The Leahy-Smith America Invents Act requires that the Director prescribe rules for the covered business method patent reviews that result in a final determination not later than one year after the date on which the Director notices the institution of a proceeding. The one-year period may be extended for not more than 6 months if good cause is shown. *See* 35 U.S.C. 326(a)(11). The Leahy-Smith America Invents Act also requires that the Director, in prescribing rules for covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings. *See* 35 U.S.C. 326(b). Consistent with the time periods provided in 35 U.S.C. 326(a)(11), the proposed rules are designed to, except where good cause is shown to exist, result in a final determination by the Patent Trial and Appeal Board within one year of the notice of initiation of the review. This one-year review will enhance the effect on the economy, and improve the integrity of the patent system and the efficient administration of the Office.

3. *Description and Estimate of the Number of Affected Small Entities:* The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the Regulatory Flexibility Act, and after consultation with the Small Business Administration, the Office formally adopted an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR 67109 (Nov. 20, 2006), 1313 *Off. Gaz. Pat. Office* 60 (Dec. 12, 2006). This alternate small business size standard is SBA's previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. *See* 13 CFR 121.802. If patent applicants identify themselves on a patent application as qualifying for reduced patent fees, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Unlike the SBA small business size standards set forth in 13 CFR 121.201, the size standard for USPTO is not industry-specific. The Office's definition of a small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 67112 (Nov 20, 2006), 1313 *Off. Gaz. Pat. Office* at 63 (Dec. 12, 2006).

As discussed above, it is anticipated that 50 petitions for covered business method patent review will be filed in fiscal year 2013. The Office has reviewed the percentage of patents for which *inter partes* reexamination was requested from October 1, 2000 to September 23, 2011. A summary of that review is provided in Table 1 above. As demonstrated by Table 1, patents known to be owned by a small entity represent 32.79% of patents for which *inter partes* reexamination was requested. Based on an assumption that the same percentage of patents owned by small entities will be subject to the new review proceedings, it is estimated that 16 patents owned by small entities would

be affected by covered business method patent review.

The USPTO estimates that 2.5% of patent owners will file a request for adverse judgment prior to a decision to institute and that another 2.5% will file a request for adverse judgment or fail to participate after initiation. Specifically, an estimated 2 patent owners will file a request for adverse judgment or fail to participate after institution in covered business method proceedings. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%) from October 1, 2000 to September 23, 2011, it is estimated that 1 small entity will file such request or fail to participate in covered business method patent review.

Under the proposed rules, prior to determining whether to institute a review, the patent owner may file an optional patent owner preliminary response to the petition. Given the new time period requirements to file a petition for review before the Board relative to patent enforcement proceedings and the desirability to avoid the cost of a trial and delays to related infringement actions, it is anticipated that 90% of petitions, other than those for which a request for adverse judgment is filed, will result in the filing of a patent owner preliminary response. Specifically, the Office estimates that 45 patent owners will file a preliminary response to a covered business method patent petition. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 15 small entities will file a preliminary response to a covered business method patent review petition filed in fiscal year 2013.

Under the proposed rules, the Office will determine whether to institute a trial within three months after the earlier of: (1) The submission of a patent owner preliminary response, (2) the waiver of filing a patent owner preliminary response, or (3) the expiration of the time period for filing a patent owner preliminary response. If the Office decides not to institute a trial, the petitioner may file a request for reconsideration of the Office's decision. In estimating the number of requests for reconsideration, the Office considered the percentage of *inter partes* reexaminations that were denied relative to those that were ordered (24 divided by 342, or 7%) in fiscal year 2011. *See* Reexamination—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf*. The Office also considered the impact of: (1) patent owner preliminary responses under newly authorized in 35 U.S.C. 323, (2) the enhanced thresholds for instituting reviews set forth in 35 U.S.C. 324(a), which would tend to increase the likelihood of dismissing a petition for review, and (3) the more restrictive time period for filing a petition for review in 35 U.S.C. 325(b), which would tend to reduce the likelihood of dismissing a petition. Based on these considerations, it is estimated that 10% of the petitions for review (5 divided by 49) would be dismissed.

Thus, the Office estimates that no more than 5 entities (2 small entities) would be subject to a denial of the petition to initiate covered business method review. This estimate is based upon either the patent failing to meet the proposed definition for technological invention or because the petitioner failed to meet the likelihood of success standard. Of the remaining 90% of petitions that proceed to trial, all entities (large or small) could be subject to the proposed definition for technological invention since jurisdictional issues may be raised at any time.

During fiscal year 2011, the Office issued 21 decisions following a request for reconsideration of a decision on appeal in *inter partes* reexamination. The average time from original decision to decision on reconsideration was 4.4 months. Thus, the decisions on reconsideration were based on original decisions issued from July 2010 until June 2011. During this time period, the Office mailed 63 decisions on appeals in *inter partes* reexamination. *See* BPAI Statistics—Receipts and Dispositions by Technology Center, *http://www.uspto.gov/ip/boards/bpai/stats/receipts/index.jsp* (*monthly data*). Based on the assumption that the same rate of reconsideration (21 divided by 63 or 33.333%) will occur, the Office estimates that 2 requests for reconsideration will be filed. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 1 small entity will file a request for a reconsideration of a decision dismissing the petition for post-grant or covered business method patent review filed in fiscal year 2013.

The Office reviewed motions, oppositions, and replies in a number of contested trial proceedings before the trial section of the Board. The review included determining whether the motion, opposition, and reply were directed to patentability grounds and non-priority non-patentability grounds. Based on the review, it is anticipated that covered business method patent reviews will have an average of 8.89 motions, oppositions, and replies per trial after institution. Settlement is estimated to occur in 20% of instituted trials at various points of the trial. In the trials that are settled, it is estimated that only 50% of the noted motions, oppositions, and replies would be filed.

After a trial has been instituted but prior to a final written decision, parties to a covered business method patent review may request an oral hearing. It is anticipated that 45 requests for oral hearings will be filed based on the number of requests for oral hearings in *inter partes* reexamination, the stated desirability for oral hearings during the legislative process, and the public input received prior to this notice of proposed rulemaking. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 15 small entities will file a request for oral hearing in the covered business method patent reviews instituted in fiscal year 2013.

Parties to a covered business method patent review may file requests to treat a settlement as business confidential, and request for adverse judgment. A written request to make a settlement agreement available may also be filed. Given the short time period set for conducting trials, it is anticipated that the alternative dispute resolution options will be infrequently used. The Office estimates that 2 requests to treat a settlement as business confidential, and 10 requests for adverse judgment, default adverse judgment, or settlement notices will be filed. The Office also estimates that 2 requests to make a settlement available will be filed. Based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 1 small entity will file a request to treat a settlement as business confidential and 3 small entities will file a request for adverse judgment, default adverse judgment notices, or settlement notices in the reviews instituted in fiscal year 2013.

Parties to a covered business method patent review may seek judicial review of the final decision of the Board. Historically, 33% of examiner's decisions in *inter partes* reexamination proceedings have been appealed to the Board. It is anticipated that 16% of final decisions of the Board would be appealed. The reduction in appeal rate is based on the higher threshold for institution, the focused process, and the experience of the Board in conducted contested cases. Therefore, it is estimated that 5 parties would seek judicial review of the final decisions of the Board in covered business method

patent reviews instituted in fiscal year 2013. Furthermore, based on the percentage of small entity owned patents that were the subject of *inter partes* reexamination (32.79%), it is estimated that 2 small entities would seek judicial review of final decisions of the Board in the covered business method patent reviews instituted in fiscal year 2013.

4. *Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record:* Covered business method patent reviews would be limited to business method patents that are not patents for technological inventions. Under the proposed rules, a person who is not the owner of a patent may file a petition to institute a review of the patent, with a few exceptions. Given this, it is anticipated that a petition for review is likely to be filed by an entity practicing in the business method field for covered business methods.

Preparation of the petition would require analyzing the patent claims, locating evidence supporting arguments of unpatentability, and preparing the petition seeking review of the patent. This notice provides the proposed procedural requirements that are common for the new trials. Additional requirements are provided in contemporaneous trial specific proposed rulemaking. The procedures for petitions to institute a covered business method patent review are proposed in §§ 42.5, 42.6, 42.8, 42.11, 42.13, 42.20, 42.21, 42.22, 42.24(a)(3), 42.63, 42.65, 42.203, 42.205, and 42.302 through 42.304.

The skills necessary to prepare a petition for review and to participate in a trial before the Patent Trial and Appeal Board would be similar to those needed to prepare a request for *inter partes* reexamination, to represent a party in an *inter partes* reexamination, and to represent a party in an interference proceeding before the Patent Trial and Appeal Board. The level of skill is typically possessed by a registered patent practitioner having devoted professional time to the particular practice area, typically under the supervision of a practitioner skilled in the particular practice area. Where authorized by the Board, a non-registered practitioner may be admitted *pro hac vice,* on a case-by-case basis based on the facts and circumstances of the trial and party, as well as the skill of the practitioner.

The cost of preparing a petition for covered business method patent review is estimated to be 33.333% higher than the cost of preparing an *inter partes* review petition because the petition for covered business method patent review may seek to institute a proceeding on additional grounds such as subject matter eligibility. The American Intellectual Property Law Association's *AIPLA Report of the Economic Survey 2011* reported that the average cost of preparing a request for *inter partes* reexamination was $46,000. Based on the Office's consideration of the work required to prepare and file such a request, the Office estimates that the cost of preparing a petition for covered business method patent review would be $61,333 (including expert costs).

The filing of a petition for review would also require payment by the petitioner of the appropriate petition fee to recover the aggregate cost for providing the review. The appropriate petition fee would be determined by the number of claims for which review is sought and the type of review. The proposed fees for filing a petition for covered business method patent review would be: $35,800 to request review of 20 or fewer claims, $44,750 to request review of 21 to 30 claims, $53,700 to request review of 31 to 40 claims, $71,600 to request review of 41 to 50 claims, $89,500 to request review of 51 to 60 claims, and an additional $35,800 to request review of additional groups of 10 claims.

In setting fees, the estimated information technology cost to establish the process and maintain the filing and storage system through 2017 is to be recovered by charging each petition $2,270. The remainder of the fee is to recover the cost for judges to determine whether to institute a review and conduct the review, together with a proportionate share of indirect costs, *e.g.,* rent, utilities, additional support, and administrative costs. Based on the direct and indirect costs, the fully burdened cost per hour for judges to decide a petition and conduct a review is estimated to be $258.32.

For a petition for covered business method patent review with 20 or fewer challenged claims, it is anticipated that 121 hours of judge time would be required. For 21 to 30 challenged claims, an additional 30 hours is anticipated for a total of 151 hours of judge time. For 31 to 40 challenged claims, an additional 60 hours is anticipated for a total of 181 hours of judge time. For 41 to 50 challenged claims, an additional 121 hours is anticipated for a total of 242 hours of judge time. For 51 to 60 challenged claims, an additional 181 hours is anticipated for a total of 302 hours of judge time. The increase in adjustment reflects the added complexity that typically occurs as more claims are in dispute.

The proposed rules would permit the patent owner to file a preliminary response to the petition setting forth the reasons why no review should be initiated. The procedures for a patent owner to file a preliminary response as an opposition are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.107, 42.120, 42.207, and 42.220. The patent owner is not required to file a preliminary response. The Office estimates that the preparation and filing of a patent owner preliminary response would require 100 hours of professional time and cost $34,000 (including expert costs). The *AIPLA Report of the Economic Survey 2011* reported that the average cost for *inter partes* reexamination including of the request ($46,000), the first patent owner response, and third party comments was $75,000 (*see* I–175) and the median billing rate for professional time of $340 per hour for attorneys in private firms (*see 8*). Thus, the cost of the first patent owner reply and the third party statement is $29,000. The Office finds these costs to be reasonable estimates. The patent owner reply and third party statement, however, occur after the examiner has made an initial threshold determination and made only the appropriate rejections. Accordingly, it is anticipated that filing a patent owner preliminary response to a petition for review would cost more than the initial reply in a reexamination, or an estimated $34,000 (including expert costs).

The Office will determine whether to institute a trial within three months after the earlier of: (1) The submission of a patent owner preliminary response, (2) the waiver of filing a patent owner preliminary response, or (3) the expiration of the time period for filing a patent owner preliminary response. If the Office decides not to institute a trial, the petitioner may file a request for reconsideration of the Office's decision. It is anticipated that a request for reconsideration will require 80 hours of professional time to prepare and file, at a cost of $340 per hour, for a total estimated cost of $27,200. This estimate is based on the complexity of the issues and desire to avoid time bars imposed by 35 U.S.C. 325(b).

Following institution of a trial, the parties may be authorized to file various motions, *e.g.,* motions to amend and motions for additional discovery. Where

a motion is authorized, an opposition may be authorized, and where an opposition is authorized, a reply may be authorized. The procedures for filing a motion are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(5), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.221, and 42.223. The procedures for filing an opposition are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.207, and 42.220. The procedures for filing a reply are proposed in §§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(c), 42.51, 42.52, 42.53, 42.54, 42.63, and 42.65. As discussed previously, the Office estimates that the average covered business method patent review will have 8.89 motions, oppositions, and replies after institution.

The *AIPLA Report of the Economic Survey 2011* reported that the average cost in contested cases before the trial section of the Board prior to the priority phase was $322,000 per party. Because of the overlap of issues in patentability grounds, it is expected that the cost per motion will decline as more motions are filed in a proceeding. It is estimated that a motion, opposition, or reply in a derivation would cost $34,000, which is estimated by dividing the total public cost for all motions in current contested cases divided by the estimated number of motions in derivations under 35 U.S.C. 135, as amended. The cost of a motion, opposition, or reply in a covered business method patent review is estimated at $44,200 (including expert costs), reflecting the reduction in overlap between motions relative to derivation. Based on the work required to file and prepare such briefs, the Office considers the reported cost as a reasonable estimate.

After a trial has been instituted but prior to a final written decision, parties to a covered business method patent review may request an oral hearing. The procedure for filing requests for oral argument is proposed in § 42.70. The *AIPLA Report of the Economic Survey 2011* reported that the third quartile cost of an *ex parte* appeal with an oral argument is $12,000, while the third quartile cost of an *ex parte* appeal without an oral argument is $6,000. In view of the reported costs, which the Office finds reasonable, and the increased complexity of an oral hearing with multiple parties, it is estimated that the cost per party for oral hearings would be $6,800 or $800 more than the reported third quartile cost for an *ex parte* oral hearing.

Parties to a covered business method patent review may file requests to treat a settlement as business confidential, or file a request for adverse judgment. A written request to make a settlement agreement available may also be filed. The procedures to file requests that a settlement be treated as business confidential are proposed in § 42.74(c). The procedures to file requests for adverse judgment are proposed in § 42.73(b). The procedures to file requests to make a settlement agreement available are proposed in § 42.74(c)(2). It is anticipated that requests to treat a settlement as business confidential will require 2 hours of professional time or $680. It is anticipated that requests for adverse judgment will require 1 hour of professional time or $340. It is anticipated that requests to make a settlement agreement available will require 1 hour of professional time or $340. The requests to make a settlement agreement available will also require payment of a fee of $400 specified in proposed § 42.15(d).

Parties to a review proceeding may seek judicial review of the judgment of the Board. The procedures to file notices of judicial review of a Board decision, including notices of appeal and notices of election provided for in 35 U.S.C. 141, 142, 145, and 146, are proposed in §§ 90.1 through 90.3. The submission of a copy of a notice of appeal or a notice of election is anticipated to require 6 minutes of professional time at a cost of $34.

5. *Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Rules on Small Entities:*

Definition of Technological Invention: The definition proposed is consistent with the legislative history of the Leahy-Smith America Invents Act. *See, e.g.,* 157 Cong. Rec. S1364 (daily ed. Mar. 8, 2011) (statement of Sen. Schumer) (''The 'patents for technological inventions' exception only excludes those patents whose novelty turns on a technological innovation over the prior art and are concerned with a technical problem which is solved with a technical solution and which requires the claims to state the technical features which the inventor desires to protect.''). The Office considered proposing that a technological invention be defined as any claimed invention in any patent having an original classification in any class other than Class 705 of the United States Patent Classification System. Adoption of the alternative definition as applied to certain patents would have been either overly narrow or overly broad. For example, there are patents that are originally classified in Class 705 which solve technical problems with technical solutions and which are patentable over the prior art based on a technological innovation. Similarly there are patents that are originally classified in classes other than Class 705 which fail to solve a technical problem with a technical solution and fail to be patentable over the prior art based on a technological innovation. For those reasons, the other considered definition was not adopted in view of the legislative history.

Size of petitions and motions: The Office considered whether to apply a page limit and what an appropriate page limit would be. The Office does not currently have a page limit on *inter partes* reexamination requests. The *inter partes* reexamination requests from October 1, 2010 to June 30, 2011, averaged 246 pages. Based on the experience of processing *inter partes* reexamination requests, the Office finds that the very large size of the requests has created a burden on the Office that hinders the efficiency and timeliness of processing the requests, and creates a burden on patent owners. The quarterly reported average processing time from the filing of a request to the publication of a reexamination certificate ranged from 28.9 months to 41.7 months in fiscal year 2009, from 29.5 months to 37.6 months in fiscal year 2010, and from 31.9 to 38.0 months in fiscal year 2011. *See* Reexaminations—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.*

By contrast, the Office has a page limit on the motions filed in contested cases, except where parties are specifically authorized to exceed the limitation. The typical contested case proceeding is subject to a standing order that sets a 50 page limit for motions and oppositions on priority, a 15 page limit for miscellaneous motions (§ 41.121(a)(3)) and oppositions (§ 41.122), and a 25 page limit for other motions (§ 41.121(a)(2)) and oppositions to other motions. In typical proceedings, replies are subject to a 15 page limit if directed to priority, 5 page limit for miscellaneous issues, and 10 page limit for other motions. The average contested case was terminated in 10.1 months in fiscal year 2009, in 12 months in fiscal year 2010, and 9 months in fiscal year 2011. The percentage of contested cases terminated within 2 years was 93.7% in fiscal year 2009, 88.0% in fiscal year 2010, and 94.0% in fiscal year 2011. *See* BPAI Statistics—Performance Measures, *http://www.uspto.gov/ip/boards/bpai/stats/perform/index.jsp.*

Comparing the average time period for terminating a contested case, 10.0 to

12.0 months, with the average time period, during fiscal years 2009 through 2011, for completing an *inter partes* reexamination, 28.9 to 41.7 months, indicates that the average interference takes from 24% (10.0/41.7) to 42% (12.0/28.9) of the time of the average *inter partes* reexamination. While several factors contribute to the reduction in time, limiting the size of the requests and motions is considered a significant factor. Proposed § 42.24 would provide page limits for petitions, motions, oppositions, and replies. 35 U.S.C. 326(b) provides considerations that are to be taken into account when prescribing regulations including the integrity of the patent system, the efficient administration of the Office, and the ability to complete timely the trials. The page limits proposed in these rules are consistent with these considerations.

Federal courts routinely use page limits in managing motions practice as ''[e]ffective writing is concise writing.'' *Spaziano* v. *Singletary,* 36 F.3d 1028, 1031 n.2 (11th Cir. 1994). Many district courts restrict the number of pages that may be filed in a motion including, for example, the District of Delaware, the District of New Jersey, the Eastern District of Texas, the Northern, Central, and Southern Districts of California, and the Eastern District of Virginia.

Federal courts have found that page limits ease the burden on both the parties and the courts, and patent cases are no exception. *Eolas Techs., Inc.* v. *Adobe Sys., Inc.,* No. 6:09–CV–446, at 1 (E.D. Tex. Sept. 2, 2010) (''The Local Rules' page limits ease the burden of motion practice on both the Court and the parties.''); *Blackboard, Inc.* v. *Desire2Learn, Inc.,* 521 F. Supp. 2d 575, 576 (E.D. Tex. 2007) (The parties ''seem to share the misconception, popular in some circles, that motion practice exists to require federal judges to shovel through steaming mounds of pleonastic arguments in Herculean effort to uncover a hidden gem of logic that will ineluctably compel a favorable ruling. Nothing could be farther from the truth.''); *Broadwater* v. *Heidtman Steel Prods., Inc.,* 182 F. Supp. 2d 705, 710 (S.D. Ill. 2002) (''Counsel are strongly advised, in the future, to not ask this Court for leave to file any memoranda (supporting or opposing dispositive motions) longer than 15 pages. The Court has handled complicated patent cases and employment discrimination cases in which the parties were able to limit their briefs supporting and opposing summary judgment to 10 or 15 pages.'' (Emphasis omitted)).

The Board's contested cases experience with page limits in motions practice is consistent with that of the federal courts. The Board's use of page limits has shown it to be beneficial without being unduly restrictive for the parties. Page limits have encouraged the parties to focus on dispositive issues, easing the burden of motions practice on the parties and on the Board.

The Board's contested cases experience with page limits is informed by its use of different approaches over the years. In the early 1990s, page limits were not routinely used for motions, and the practice suffered from lengthy and unacceptable delays. To reduce the burden on the parties and on the Board and thereby reduce the time to decision, the Board instituted page limits in the late 1990s for every motion. Page limit practice was found to be effective in reducing the burdens on the parties and improving decision times at the Board. In 2006, the Board revised the page limit practice and allowed unlimited findings of fact and generally limited the number of pages containing argument. Due to abuses of the system, the Board recently reverted back to page limits for the entire motion (both argument and findings of fact).

The Board's current page limits are consistent with the 25 page limits in the Northern, Central, and Southern Districts of California, and the Middle District of Florida and exceed the limits in the District of Delaware (20), the Northern District of Illinois (15), the District of Massachusetts (20), the Eastern District of Michigan (20), the Southern District of Florida (20), and the Southern District of Illinois (20).

In a typical proceeding before the Board, a party may be authorized to file a single motion for unpatentability based on prior art, a single motion for unpatentability based upon failure to comply with 35 U.S.C. 112, lack of written description, and/or enablement, and potentially another motion for lack of compliance with 35 U.S.C. 101, although a 35 U.S.C. 101 motion may be required to be combined with the 35 U.S.C. 112 motion. Each of these motions is currently limited to 25 pages in length, unless good cause is shown that the page limits are unduly restrictive for a particular motion.

A petition requesting the institution of a trial proceeding would be similar to motions currently filed with the Board. Specifically, petitions to institute a trial seek a final written decision that the challenged claims are unpatentable, where derivation is a form of unpatentability. Accordingly, a petition to institute a trial based on prior art would, under current practice, be limited to 25 pages, and by consequence, a petition raising unpatentability based on prior art and unpatentability under 35 U.S.C. 101 and/or 112 would be limited to 50 pages.

Under the proposed rules, a covered business method patent review petition would be based upon any grounds identified in 35 U.S.C. 321(b), *e.g.,* failure to comply with 35 U.S.C. 101, 102 (based on certain references), 103, and 112 (except best mode). Under current practice, a party would be limited to filing two or three motions, each limited to 25 pages, for a maximum of 75 pages. Where there is more than one motion for unpatentability based upon different statutory grounds, the Board's experience is that the motions contain similar discussions of technology and claim constructions. Such overlap is unnecessary where a single petition for unpatentability is filed. Thus, the proposed 70 page limit is considered sufficient in all but exceptional cases.

The proposed rule would provide that petitions to institute a trial must comply with the stated page limits but may be accompanied by a motion that seeks to waive the page limits. The petitioner must show in the motion how a waiver of the page limits is in the interests of justice. A copy of the desired non-page limited petition must accompany the motion. Generally, the Board would decide the motion prior to deciding whether to institute the trial.

Current Board practice provides a limit of 25 pages for other motions and 15 pages for miscellaneous motions. The Board's experience is that such page limits are sufficient for the parties filing them and do not unduly burden the opposing party or the Board. Petitions to institute a trial would generally replace the current practice of filing motions for unpatentability, as most motions for relief are expected to be similar to the current interference miscellaneous motion practice. Accordingly, the proposed 15 page limit is considered sufficient for most motions but may be adjusted where the limit is determined to be unduly restrictive for the relief requested.

Proposed § 42.24(b) would provide page limits for oppositions filed in response to motions. Current contested cases practice provides an equal number of pages for an opposition as its corresponding motion. This is generally consistent with motions practice in federal courts. The proposed rule would continue the current practice.

Proposed § 42.24(c) would provide page limits for replies. Current contested cases practice provides a 15 page limit for priority motion replies, a 5 page limit for miscellaneous

(procedural) motion replies, and a 10 page limit for all other motions. The proposed rule is consistent with current contested case practice for procedural motions. The proposed rule would provide a 15 page limit for reply to petitions requesting a trial, which the Office believes is sufficient based on current practice. Current contested cases practice has shown that such page limits do not unduly restrict the parties and, in fact, have provided sufficient flexibility to parties to not only reply to the motion but also help to focus on the issues. Thus, it is anticipated that default page limits would minimize the economic impact on small entities by focusing on the issues in the trials.

The Leahy-Smith America Invents Act requires that the Director, in prescribing rules for covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings. *See* 35 U.S.C. 326(b). In view of the actual results of the duration of proceedings in *inter partes* reexamination (without page limits) and contested cases (with page limits), proposing procedures with reasonable page limits would be consistent with the objectives set forth in the Leahy-Smith America Invents Act. Based on our experience on the time needed to complete a non-page limited proceeding, the option of non-page limited proceedings was not adopted.

Fee Setting: 35 U.S.C. 321(a) requires the Director to establish fees to be paid by the person requesting the review in such amounts as the Director determines to be reasonable, considering the aggregate costs of the review. In contrast to current 35 U.S.C. 311(b) and 312(c), the Leahy-Smith America Invents Act requires the Director to establish more than one fee for reviews based on the total cost of performing the reviews, and does not provide for refund of any part of the fee when the Director determines that the review should not be initiated.

35 U.S.C. 322(a)(1) further requires that the fee established by the Director under 35 U.S.C. 321 accompany the petition on filing. Accordingly, in interpreting the fee setting authority in 35 U.S.C. 321(a), it is reasonable that the Director should set a number of fees for filing a petition based on the anticipated aggregate cost of conducting the review depending on the complexity of the review, and require payment of the fee upon filing of the petition.

Based on experience with contested cases and *inter partes* reexamination proceedings, the following characteristics of requests were considered as potential factors for fee setting as each would likely impact the cost of providing the new services. The Office also considered the relative difficulty in administrating each option in selecting the characteristics for which different fees should be paid for requesting review.

I. *Adopted Option.* Number of claims for which review is requested. The number of claims often impacts the complexity of the request and increases the demands placed on the deciding officials. *Cf. In re Katz Interactive Call Processing Patent Litig.,* 639 F.3d 1303, 1309 (Fed. Cir. 2011) (limiting number of asserted claims is appropriate to efficiently manage a case). Moreover, the number of claims for which review is requested can be easily determined and administered, which avoids delays in the Office and the impact on the economy or patent system that would occur if an otherwise meritorious request is refused due to improper fee payment. Any subsequent petition would be time barred in view of 35 U.S.C. 325.

II. *Alternative Option I.* Number of grounds for which review is requested. The Office has experience with large numbers of cumulative grounds being presented in *inter partes* reexaminations which often add little value to the proceedings. Allowing for a large number of grounds to be presented on payment of an additional fee(s) is not favored. Determination of the number of grounds in a request may be contentious and difficult and may result in a large amount of high-level petition work. As such, the option would have a negative impact on small entities. Moreover, interferences instituted in the 1980s and early 1990s suffered from this problem as there was no page limit for motions and the parties had little incentive to focus the issues for decision. The resulting interference records were often a collection of disparate issues and evidence. This led to lengthy and unwarranted delays in deciding interference cases as well as increased costs for parties and the Office. Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete the instituted proceedings.

III. *Alternative Option II.* Pages of argument. The Office has experience with large requests in *inter partes* reexamination in which the merits of the proceedings could have been resolved in a shorter request. Allowing for unnecessarily large requests on payment of an additional fee(s) is not favored. Moreover, determination of what should be counted as ''argument'' as compared with ''evidence'' has often proven to be contentious and difficult as administered in the current *inter partes* reexamination appeal process.

In addition, the trial section of the Board recently experimented with motions having a fixed page limit for the argument section and an unlimited number of pages for the statement of facts. Unlimited pages for the statement of facts led to a dramatic increase in the number of alleged facts and pages associated with those facts. For example, one party used approximately 10 pages for a single ''fact'' that merely cut and pasted a portion of a declarant's cross-examination. Based upon the trial section's experience with unlimited pages of facts, the Board recently reverted back to a fixed page limit for the entire motion (argument and facts). Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

IV. *Alternative Option III.* The Office considered an alternative fee setting regime in which fees would be charged at various steps in the review process, a first fee on filing of the petition, a second fee if instituted, a third fee on filing a motion in opposition to amended claims, *etc.* The alternative fee setting regime would hamper the ability of the Office to complete timely reviews, would result in dismissal of pending proceedings with patentability in doubt due to non-payment of required fees by third parties, and would be inconsistent with 35 U.S.C. 322 that requires the fee established by the Director be paid at the time of filing the petition. Accordingly, this alternative is inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

V. *Alternative Option IV.* The Office considered setting reduced fees for small and micro entities and to provide refunds if a review is not instituted. The Office may set the fee to recover the cost of providing the services under 35 U.S.C. 41(d)(2)(a). Fees set under this authority are not reduced for small entities, *see* 35 U.S.C. 42(h)(1), as amended. Moreover, the Office does not have authority to refund fees that were not paid by mistake or in excess of that owed. *See* 35 U.S.C. 42(d).

Discovery: The Office considered a procedure for discovery similar to the one available during district court litigation. Discovery of that scope has been criticized sharply, particularly when attorneys use discovery tools as tactical weapons, which hinder the ''just, speedy, and inexpensive determination of every action and proceedings.'' *See* Introduction to *An E–Discovery Model Order* available at *http://www.cafc.uscourts.gov/images/stories/announcements/Ediscovery_Model_Order.pdf.* Accordingly, this alternative would have been inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

Additional discovery increases trial costs and increases the expenditures of time by the parties and the Board. To promote effective discovery, the proposed rule would require a showing of good cause to authorize additional requested discovery. To show good cause, a party must make a particular and specific demonstration of fact. The moving party must also show that it was fully diligent in seeking discovery, and that there is no undue prejudice to the non-moving party.

The Office has proposed a default scheduling order to provide limited discovery as a matter of right and also the ability to seek additional discovery on a case-by-case basis. In weighing the need for additional discovery, should a request be made, the economic impact on the opposing party would be considered which would tend to limit additional discovery where a party is a small entity.

Pro Hac Vice: The Office considered whether to allow counsel to appear *pro hac vice.* In certain cases, highly skilled, but non-registered, attorneys have appeared satisfactorily before the Board in contested cases. The Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause. Proceedings before the Office can be technically complex. Consequently, the grant of a motion to appear *pro hac vice* is a discretionary action taking into account the specifics of the proceedings. Similarly, the revocation of *pro hac vice* is a discretionary action taking into account various factors, including incompetence, unwillingness to abide by the Office's Rules of Professional Conduct, prior findings of misconduct before the Office in other proceedings, and incivility.

The Board's past practice has required the filing of a motion by a registered patent practitioner seeking *pro hac vice* representation based upon a showing of: (1) How qualified the unregistered practitioner is to represent the party in the proceeding when measured against a registered practitioner, and, (2) whether the party has a genuine need to have the particular unregistered practitioner represent it during the proceeding. This practice has proven effective in the limited number of contested cases where such requests have been granted. The proposed rule, if adopted, would allow for this practice in the new proceedings authorized by the Leahy-Smith America Invents Act.

The proposed rules would provide a limited delegation to the Board under 35 U.S.C. 2(b)(2) and 32 to regulate the conduct of counsel in Board proceedings. The proposed rule would delegate to the Board the authority to conduct counsel disqualification proceedings while the Board has jurisdiction over a proceeding. The rule would also delegate to the Chief Administrative Patent Judge the authority to make final a decision to disqualify counsel in a proceeding before the Board for the purposes of judicial review. This delegation would not derogate from the Director the prerogative to make such decisions, nor would it prevent the Chief Administrative Patent Judge from further delegating authority to an administrative patent judge.

The Office considered broadly permitting practitioners not registered to practice by the Office to represent parties in trial as well as categorically prohibiting such practice. A prohibition on the practice would be inconsistent with the Board's experience, and more importantly, might result in increased costs particularly where a small entity has selected its district court litigation team for representation before the Board and has a patent review filed after litigation efforts have commenced. Alternatively, broadly making the practice available would create burdens on the Office in administering the trials and in completing the trial within the established time frame, particularly if the selected practitioner does not have the requisite skill. In weighing the desirability of admitting a practitioner *pro hac vice,* the economic impact on the party in interest would be considered which would tend to increase the likelihood that a small entity could be represented by a non-registered practitioner. Accordingly, the alternatives to eliminate *pro hac vice* practice or to permit more broadly it would have been inconsistent with objectives of the Leahy-Smith America Invents Act that the Director, in prescribing rules for the covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

Threshold for Instituting a Review: The Office considered whether the threshold for instituting a review could be set as low as or lower than the threshold for *ex parte* reexamination. This alternative could not be adopted in view of the statutory requirements in 35 U.S.C. 324.

Default Electronic Filing: The Office considered a paper filing system and a mandatory electronic filing system (without any exceptions) as alternatives to the proposed requirement that all papers are to be electronically filed, unless otherwise authorized.

Based on the Office's experience, a paper based filing system increases delay in processing papers, delay in public availability, and the chance that a paper may be misplaced or made available to an improper party if confidential. Accordingly, the alternative of a paper based filing system would have been inconsistent with objectives of the Leahy-Smith America Invent Act that the Director, in prescribing rules for the covered business method patent reviews, consider the effect of the rules on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to complete timely the instituted proceedings.

An electronic filing system (without any exceptions) that is rigidly applied would result in unnecessary cost and burdens, particularly where a party lacks the ability to file electronically. By contrast, if the proposed option is adopted, it is expected that the entity size and sophistication would be considered in determining whether alternative filing methods would be authorized.

6. *Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rules:*

37 CFR 1.99 provides for the submission of information after publication of a patent application during examination by third parties.

37 CFR 1.171–1.179 provide for applications to reissue a patent to correct errors, including where a claim in a patent is overly broad.

37 CFR 1.291 provides for the protest against the issuance of a patent during examination.

37 CFR 1.321 provides for the disclaimer of a claim by a patentee.

37 CFR 1.501 and 1.502 provide for *ex parte* reexamination of patents. Under these rules, a person may submit to the Office prior art consisting of patents or printed publications that are pertinent to the patentability of any claim of a patent, and request reexamination of any claim in the patent on the basis of the cited prior art patents or printed publications. Consistent with 35 U.S.C. 302–307, *ex parte* reexamination rules provide a different threshold for initiation, required the proceeding to be conducted by an examiner with a right of appeal to the Patent Trial and Appeal Board, and allow for limited participation by third parties.

37 CFR 1.902–1.997 provide for *inter partes* reexamination of patents. Similar to *ex parte* reexamination, *inter partes* reexamination provides a procedure in which a third party may request reexamination of any claim in a patent on the basis of the cited prior art patents and printed publication. The *inter partes* reexamination practice will be eliminated, except for requests filed before the effective date, September 16, 2012. *See* § 6(c)(3)(C) of the Leahy-Smith America Invents Act.

Other countries have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)). Nevertheless, the Office believes that there are no other duplicative or overlapping foreign rules.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

Based on the petition and other filing requirements for initiating a review proceeding, the USPTO estimates the burden of the proposed rules on the public to be $22,761,410 in fiscal year 2013, which represents the sum of the estimated total annual (hour) respondent cost burden ($20,405,610) plus the estimated total annual non-hour respondent cost burden ($2,355,800) provided in Part O, Section II, of this notice, *infra.*

The USPTO expect several benefits to flow from the Leahy-Smith America Invents Act and these proposed rules. It is anticipated that the proposed rules will reduce the time for reviewing patents at the USPTO. Specifically, 35 U.S.C. 326(a) provides that the Director prescribe regulations requiring a final determination by the Board within one year of initiation, which may be extended for up to six months for good cause. In contrast, currently for *inter partes* reexamination, the average time from the filing to the publication of a certificate ranged from 28.9 to 41.7 months during fiscal years 2009–2011. *See* Reexaminations—FY 2011, *http://www.uspto.gov/patents/Reexamination_operational_statistic_through_FY2011Q4.pdf.*

Likewise, it is anticipated that the proposed rules will minimize duplication of efforts. In particular, the Leahy-Smith America Invents Act provides more coordination between district court infringement litigation and covered business method patent review to reduce duplication of efforts and costs.

The *AIPLA Report of the Economic Survey 2011* reports that the total cost of patent litigation where the damages at risk are less than $1,000,000 average $916,000, where the damages at risk are between $1,000,000 and $25,000,000 average $2,769,000, and where the damages at risk exceed $25,000,000 average $6,018,000. There may be a significant reduction in overall burden if, as intended, the Leahy-Smith America Invents Act and the proposed rules reduce the overlap between review at the USPTO of issued patents and validity determination during patent infringement actions. Data from the United States district courts reveals that 2,830 patent cases were filed in 2006, 2,896 in 2007, 2,909 in 2008, 2,792 in 2009, and 3,301 in 2010. *See* U.S. Courts, Judicial Business of the United States Courts, *www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2010/appendices/C02ASep10.pdf* (last visited Nov. 11, 2011) (hosting annual reports for 1997 through 2010). Thus, the Office estimates that no more than 3,300 (the highest number of yearly filings between 2006 and 2010 rounded to the nearest 100) patent cases are likely to be filed annually. The aggregate burden estimate above ($22,761,410) was not offset by a reduction in burden based on improved coordination between district court patent litigation and the new *inter partes* review proceedings.

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets

applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996). This rulemaking carries out a statute designed to lessen litigation. *See* H.R. Rep. No. 112–98, at 45–48.

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501–1571.

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321–4370h.

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this notice has been submitted to OMB under OMB control number 0651–00xx. In the Notice ''Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,'' RIN 0651–AC70, the information collection for all of the new trials authorized by the Leahy-Smith America Invents Act were provided. In the Notice ''Changes to Implement Transitional Program for Covered Business Method Patents,'' RIN 0651–AC73, the information collection for covered business methods authorized by the Leahy-Smith America Invents Act were provided. This notice also provides the subset of burden created by the covered business method patent review provisions. The proposed collection will be available at the OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

The USPTO is submitting the information collection to OMB for its review and approval because this notice of proposed rulemaking will add the following to a collection of information:

(1) Petitions to institute a covered business method patent review (§§ 42.5, 42.6, 42.8, 42.11, 42.13, 42.20, 42.21, 42.22, 42.24(a)(3), 42.63, 42.65, 42.203, 42.205, and 42.302 through 42.304);

(2) motions (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.22, 42.24(a)(5), 42.51 through 42.54, 42.63, 42.64, 42.65, 42.221, 42.123, and 42.223);

(3) oppositions (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(b), 42.51, 42.52, 42.53, 42.54, 42.63, 42.64, 42.65, 42.207, and 42.220);

(4) replies provided for in 35 U.S.C. 321–329 (§§ 42.6, 42.8, 42.11, 42.13, 42.21, 42.23, 42.24(c), 42.51, 42.52, 42.53, 42.54, 42.63, and 42.65).

The proposed rules also permit filing requests for oral argument (§ 42.70) provided for in 35 U.S.C. 326(a)(10), requests for rehearing (§ 42.71(c)), requests for adverse judgment (§ 42.73(b)), and requests that a settlement be treated as business confidential (§ 42.74(b)) provided for in 35 U.S.C. 327.

I. Abstract: The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, issue applications as patents.

Chapter 32 of title 35 U.S.C. in effect on September 16, 2012, provides for post-grant review proceedings allowing third parties to petition the USPTO to review the patentability of an issued patent under any ground authorized under 35 U.S.C. 282(b)(2). If a trial is initiated by the USPTO based on the petition, as authorized by the USPTO, additional motions may be filed by the petitioner. A patent owner may file a response to the petition and if a trial is instituted, as authorized by the USPTO, may file additional motions.

Section 18 of the Leahy-Smith America Invents Act provides for a transitional program for covered business method patents which will employ the standards and procedures of the post-grant review proceeding with a few exceptions.

In estimating the number of hours necessary for preparing a petition to institute a covered business method patent review, the USPTO considered the estimated cost of preparing a request for *inter partes* reexamination ($46,000), the median billing rate ($340/hour), and the observation that the cost of *inter partes* reexamination has risen the fastest of all litigation costs since 2009 in the *AIPLA Report of the Economic Survey 2011.* Since additional grounds are provided in covered business method patent review, the Office estimates the cost of preparing a petition to institute a review will be 33.333% more than the estimated cost of preparing a request for *inter partes* reexamination, or $61,333.

In estimating the number of hours necessary for preparing motions after instituting and participating in the review, the USPTO considered the *AIPLA Report of the Economic Survey 2011* which reported the average cost of a party to a two-party interference to the end of the preliminary motion phase ($322,000) and inclusive of all costs ($631,000). The Office considered that the preliminary motion phase is a good proxy for patentability reviews since that is the period of current contested cases before the trial section of the Board where most patentability motions are currently filed.

The USPTO also reviewed recent contested cases before the trial section of the Board to make estimates on the

average number of motions for any matter including priority, the subset of those motions directed to non-priority issues, the subset of those motions directed to non-priority patentability issues, and the subset of those motions directed to patentability issues based on a patent or printed publication on the basis of 35 U.S.C. 102 or 103. The review of current contested cases before the trial section of the Board indicated that approximately 15% of motions were directed to prior art grounds, 18% of motions were directed to other patentability grounds, 27% were directed to miscellaneous issues and, 40% were directed to priority issues. It was estimated that the cost per motion to a party in current contested cases before the trial section of the Board declines because of overlap in subject matter, expert overlap, and familiarity with the technical subject matter. Given the overlap of subject matter, a proceeding with fewer motions will have a somewhat less than proportional decrease in costs since the overlapping costs will be spread over fewer motions.

It is estimated that the cost of an *inter partes* review would be 60% of the cost of current contested cases before the trial section of the Board to the end of the preliminary motion period. An *inter partes* review should have many fewer motions since only one party will have a patent that is the subject of the proceeding (compared with each party having at least a patent or an application in current contested cases before the trial section of the Board). Moreover, fewer issues can be raised since *inter partes* review will not have priority-related issues that must be addressed in current contested cases before the trial section of the Board. Consequently, a 60% weighting factor should capture the typical costs of an *inter partes* review.

It is estimated that the cost of a covered business method patent review would be 75% of the cost of current contested cases before the trial section of the Board to the end of the preliminary motion period. A covered business method patent review should have many fewer motions since only one party will have a patent that is the subject of the proceeding (compared with each party having at least a patent or an application in current contested cases before the trial section of the Board). Moreover, fewer issues can be raised since covered business method patent reviews will not have the priority-related issues that must be addressed in current contested cases before the trial section of the Board before the priority phase. Again, a 75% weighting factor should capture the typical costs of a covered business method patent review.

The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burdens for the covered business method patent review provisions. Included in this estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the proposed changes in this notice of proposed rulemaking is to implement the changes to Office practice necessitated by §§ 6(d) and 18 of the Leahy-Smith America Invents Act.

The public uses this information collection to request review and derivation proceedings and to ensure that the associated fees and documentation are submitted to the USPTO.

II. Data

Needs and Uses: The information supplied to the USPTO by a petition to institute a review as well as the motions authorized following the institution is used by the USPTO to determine whether to initiate a review under 35 U.S.C. 324 and to prepare a final decision under 35 U.S.C. 328.

OMB Number: 0651–00xx.

Title: Patent Review and Derivation Proceedings.

Form Numbers: None.

Type of Review: New Collection.

Likely Respondents/Affected Public: Individuals or households, businesses or other for profit, not-for-profit institutions, farms, Federal Government, and state, local, or tribal governments.

Estimated Number of Respondents/Frequency of Collection: 100 respondents and 515 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public from 0.1 to 180.4 hours to gather the necessary information, prepare the documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 60,016.5 hours per year.

Estimated Total Annual (hour) Respondent Cost Burden: $20,405,610 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of $340 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for this collection will be approximately $20,405,610 per year (60,016.5 hours per year multiplied by $340 per hour).

Estimated Total Annual Non-hour Respondent Cost Burden: $2,355,800 per year. There are no capital start-up or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees. There are filing fees associated with petitions for covered business method patent review and for requests to treat a settlement as business confidential. The total fees for this collection are calculated in the accompanying table. The USPTO estimates that the total fees associated with this collection will be approximately $2,355,800 per year.

Therefore, the total estimated cost burden in fiscal year 2013 is estimated to be $22,761,410 (the sum of the estimated total annual (hour) respondent cost burden ($20,405,610) plus the estimated total annual non-hour respondent cost burden ($2,355,800)).

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Petition for covered business method patent review	180.4	50	9,020
Reply to initial covered business method patent review	100	45	4,500
Request for Reconsideration	80	14	1,120
Motions, replies and oppositions after institution in covered business method patent review	130	342	44,460
Request for oral hearing	20	45	900
Request to treat a settlement as business confidential	2	2	4
Request for adverse judgment, default adverse judgment or settlement	1	10	10
Request to make a settlement agreement available	1	2	2
Notice of judicial review of a Board decision (*e.g.,* notice of appeal under 35 U.S.C. 142)	0.1	5	0.5
Totals		515	60,016.5

Item	Estimated annual responses	Fee amount	Estimated annual filing costs
Petition for covered business method patent review	50	$47,100	$2,355,000
Reply to covered business method patent review petition	45	0	0
Request for Reconsideration	14	0	0
Motions, replies and oppositions after initiation in covered business method patent review	342	0	0
Request for oral hearing	45	0	0
Request to treat a settlement as business confidential	2	0	0
Request for adverse judgment, default adverse judgment or settlement	10	0	0
Request to make a settlement agreement available	2	400	800
Notice of judicial review of a Board decision (*e.g.,* notice of appeal under 35 U.S.C. 142)	5	0	0
Totals	515		2,355,800

III. Solicitation

The agency is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Interested persons are requested to send comments regarding this information collection by April 10, 2012 to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Nicholas A. Fraser, Desk Officer for the United States Patent and Trademark Office, and via email at *nfraser@omb.eop.gov*; and (2) The Board of Patent Appeals and Interferences by electronic mail message over the Internet addressed to: *TPCBMP_Definition@uspto.gov*, or by mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Judge Michael Tierney, Covered Business Method Patent Review Proposed Definition for Technological Invention.''

Notwithstanding any other provision of law, no person is 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 currently valid OMB control number.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

Proposed Amendments to the Regulatory Text

For the reasons stated in the preamble, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office propose to amend 37 CFR part 42 as proposed to be added in the February 9, 2012, issue of the **Federal Register** as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

1. The authority citation for 37 CFR part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326 and Leahy-Smith America Invents Act, Pub. L. 112–29, §§ 6(c), 6(f), and 18, 125 Stat. 284, 304, 311, and 329 (2011).

2. Add § 42.301 to subpart D to read as follows:

§ 42.301 Definitions.

In addition to the definitions in § 42.2, the following definitions apply to proceedings under this subpart D:

(a) *Covered business method patent* means a patent that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions.

(b) *Technological invention.* In determining whether a patent is for a technological invention solely for purposes of the Transitional Program for Covered Business Methods (section 42.301(a)), the following will be considered on a case-by-case basis: whether the claimed subject matter as a whole recites a technological feature that is novel and unobvious over the prior art; and solves a technical problem using a technical solution.

Dated: January 31, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–2538 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–741

RIN 1250–AA02

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of proposed rulemaking and extension of comment period.

SUMMARY: On December 9, 2011, the Office of Federal Contract Compliance Programs (OFCCP) published a **Federal Register** notice of proposed rulemaking (NPRM). This NPRM (76 FR 77056) proposes revising the regulations implementing the nondiscrimination and affirmative action regulations of section 503 of the Rehabilitation Act of 1973, as amended. This document extends the comment period for the proposed rule for fourteen (14) days. If you have already commented on the proposed rule, you do not need to resubmit your comment. OFCCP will consider all comments received from the date of publication of the proposed rule through the close of the extended comment period.

DATES: The comment period for the NPRM published on December 9, 2011, scheduled to close on February 7, 2012, is extended until February 21, 2012.

ADDRESSES: You may submit comments, identified by RIN 1250–AA02, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 693–1304 (for comments of six pages or less).
- *Mail:* Debra A. Carr, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION: On December 9, 2011, OFCCP published a proposed rule entitled, ''Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities'' (76 FR 77056). OFCCP was to receive comments on this NPRM on or before February 7, 2012.

Various organizations and entities submitted requests to extend the comment period by an additional 90 days or more. We considered these requests and determined that it is appropriate to provide an additional 14-day period for comment on the proposed regulation. We are, therefore, extending the comment period until, Tuesday, February 21, 2012.

Extension of Comment Period: OFCCP determined that the public could use additional time to review the potential impact of the proposed requirements. Therefore, to allow the public sufficient time to review and comment on the NPRM, OFCCP is extending the comment period until February 21, 2012.

Signed at Washington, DC, this 6th day of February, 2012.

Patricia A. Shiu,

Director, Office of Federal Contract Compliance Programs.

[FR Doc. 2012–3106 Filed 2–7–12; 11:15 am]

BILLING CODE 4510–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 71

[Docket No. CDC–2012–0002]

RIN 0920–AA47

Establishment of User Fees for Filovirus Testing of Nonhuman Primate Liver Samples

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Proposed Rulemaking and request for comments.

SUMMARY: Through this Notice of Proposed Rulemaking (NPRM), the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) is proposing to establish a user fee for filovirus testing of all nonhuman primates that die during the HHS/CDC-required 31-day quarantine period for any reason other than trauma. We propose to establish a filovirus testing service at HHS/CDC because testing is no longer being offered by the only private, commercial laboratory that previously performed these tests. This testing service will be funded through user fees. Elsewhere in this issue of the **Federal Register**, HHS/CDC is simultaneously publishing a companion direct final rule that proposes identical filovirus testing and user fee requirements in this **Federal Register** because it believes that these requirements are non-controversial and unlikely to generate significant adverse comment. If HHS/CDC does not receive any significant adverse comment on the direct final rule within the specified comment period, it will publish a notice in the **Federal Register** withdrawing this notice of proposed rulemaking and confirming the effective date of the direct final rule within 30 days after the end of the comment period on the direct final rule. If HHS/CDC receives any timely significant adverse comment, it will withdraw the direct final rule in part or in whole by publication of a notice in the **Federal Register** within 30 days after the comment period ends and proceed with notice and comment under this notice of proposed rulemaking. A significant adverse comment is one that explains: Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or why the direct final rule will be ineffective or unacceptable without a change.

DATES: Submit written or electronic comments by April 10, 2012.

ADDRESSES: You may submit comments, identified by ''RIN 0920–AA47'': By any of the following methods:

- *Internet:* Access the Federal e-rulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–03, Atlanta, Georgia 30333, ATTN: NHP NPRM.

Instructions: All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. All comments will be posted without change to *http://regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, please go to *http://www.regulations.gov.* Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Time, at 1600 Clifton Road NE., Atlanta, Georgia 30333. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Global Migration and Quarantine (DGMQ) to schedule your visit. To download an electronic version of the rule, access *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions concerning this notice of proposed rulemaking: Ashley A. Marrone, JD, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404 498–1600. For information concerning program operations: Dr. Robert Mullan, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404 498–1600.

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. Public Participation
II. Background
III. Rationale for Proposal
IV. User Fee
V. Services and Activities Covered by This User Fees
VI. Analysis of User Fee Charge (Cost to Government)
VII. Payment Instructions
VIII. Regulatory Analysis
IX. References

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed publicly. Comments are invited on any topic directly related to this proposed rule.

II. Background

Filoviruses belong to a family of viruses known to cause severe hemorrhagic fever in humans and nonhuman primates (NHPs). So far, only two members of this virus family have been identified: Ebola virus and Marburg virus. Five species of Ebola virus have been acknowledged: Zaire, Sudan, Reston, Ivory Coast, and Bundibugyo. Most strains of Ebola virus can be highly fatal in humans, and while the Reston strain is the only strain of filovirus that has *not* been reported to cause disease in humans, it can be fatal in monkeys. (*http://www.cdc.gov/ncidod/dvrd/spb/mnpages/dispages/filoviruses.htm*).

Ebola hemorrhagic fever was first recognized in 1976, when two epidemics occurred in southern Sudan and in Zaire. Since that time, multiple outbreaks have occurred, mostly in Central Africa, and all have been associated with high (45–90%) case-fatality rates in humans (for an updated list see *http://www.cdc.gov/ncidod/dvrd/spb/mnpages/dispages/ebola/ebolatable.htm*). In these epidemics, transmission of the disease originated or occurred in a hospital (often by contaminated needles) and was followed by person-to-person transmission by individuals who were exposed to, or had close contact with blood or secretions from seriously ill patients.

The ecology, natural history, and mode of transmission of Ebola virus in nature, and of the related Marburg virus, are becoming more clearly understood with the implication of bats as reservoirs. The incubation period for Ebola disease is 5–9 days (range: 2–15 days) but can be shorter with parenteral transmission. Disease onset is abrupt and characterized by severe malaise, headache, high fever, myalgia, joint pains, and sore throat. The progression is rapid and includes pharyngitis, conjunctivitis, diarrhea, abdominal pain, and occasionally facial edema and jaundice. Severe thrombocytopenia can occur, with hemorrhagic manifestations ranging from petechiae to frank bleeding. Death occurs primarily as a result of multi-organ failures. There is no specific therapy, and patient management is usually limited to supportive measures. The disease in nonhuman primates is very similar to that in humans, with a very high mortality.

On January 19, 1990, in response to the identification of Ebola-Reston virus in NHPs imported from the Philippines, HHS/CDC published interim guidelines for handling NHPs during transit and also during quarantine (1). Importers of NHPs were informed by letter from the HHS/CDC Director on March 15, 1990, that they must comply with specific isolation and quarantine standards under 42 CFR part 71 for continued registration as an importer of NHPs (2).

On March 23, 1990, HHS/CDC held a meeting at CDC headquarters in Atlanta, Georgia, at which the public could comment on new guidelines for the importation of NHPs and the potential impact of a temporary ban on the importation of cynomolgus monkeys into the United States (3). After considering information received at this public meeting, coupled with an April 4, 1990 confirmation of asymptomatic Ebola virus infection in four NHP caretakers and serologic findings suggesting that cynomolgus, African green, and rhesus monkeys posed a risk for human filovirus infection, HHS/CDC concluded that these three species were capable of being an animal host or vector of human disease (4).

As a result, on April 20, 1990, HHS/CDC published a notice in the **Federal Register** requiring a special-permit for importing cynomolgus, African green, and rhesus monkeys (5). To be granted a special-permit, importers must submit a plan to HHS/CDC describing specific isolation, quarantine, and communicable disease control measures. The plan must detail the measures to be carried out at every step of the chain of custody, from embarkation at the country of origin, through delivery of the NHPs to the quarantine facility and the completion of the required quarantine period. Additional requirements include detailed testing procedures for all quarantined NHPs to rule out the possibility of filovirus infection. When importers demonstrate compliance with these special-permit requirements, HHS/CDC authorizes continued shipments under the same permit for a period of 180 days. Certain components of the special-permit requirement have changed slightly in response to surveillance findings and the development of improved laboratory tests. As indicated in the 1990 notice, importers were informed of these changes by letter from HHS/CDC (6). The current special-permit notice requires filovirus antigen-detection testing on liver specimens from any NHP that dies during quarantine for reasons other than trauma (7, 8). Antibody testing is also required on surviving NHPs that exhibit signs of possible filovirus infection before the cohort is released from quarantine (9).

Since October 10, 1975, HHS/CDC has prohibited the importation of NHPs except for scientific, educational, or exhibition purposes. Over time, various measures (*e.g.,* reports, letters, guidelines, notices), have been used to support implementation of these regulations. On January 5, 2011, HHS/CDC posted a Notice of Proposed Rulemaking (NPRM) to begin the process of revising these requirements. The NPRM was intended to solicit public comment and feedback on the issue of NHP importation to determine the need for further rulemaking. Please see the docket details for HHS–OS–2011–0002 on *www.Regulations.gov,* for more information. The public comment period ended on April 25, 2011. HHS/CDC is now working toward finalizing the proposed rule and is not seeking additional comment on the NPRM through this rulemaking.

Laboratory testing of suspected NHPs and early detection of infected animals within the quarantine period prevents spread of disease among NHPs and caretakers (4). Since the implementation and strengthening of the 1990 special-permit requirements for importing nonhuman primates into the United States, the morbidity and mortality of imported animals has decreased from an estimated 20% to less than 1% (10). Since 1990, these laboratory tests have been conducted by a sole commercial laboratory. Recently, a number of circumstances have arisen such that this laboratory is no longer able to perform the testing for filovirus required on liver specimens from monkeys that die during the HHS/CDC-mandated quarantine. Further, HHS/CDC notes that the reagents required for this testing are not commercially available and production of the reagents requires a biosafety level 4 laboratory (BSL–4). A BSL–4 laboratory is also required during part of the testing procedure. To our knowledge, neither commercial entities nor Federal laboratories other than those at HHS/CDC are planning to offer this service. Because HHS/CDC has the required laboratory facility, access to the reagents, and experienced personnel, it has started performing this testing when

required and in the absence of a viable alternative.

III. Rationale for Proposal

Through this NPRM, HHS/CDC is proposing to establish a user fee to reimburse HHS/CDC for the costs incurred performing the required filovirus testing and seeks public comment on this proposal. If promulgated as proposed, upon the effective date of the final rule, every NHP quarantine facility will be contacted by HHS/CDC's Division of Global Migration and Quarantine (DGMQ), and will be instructed how to transfer tissue specimens to HHS/CDC for testing. After receipt of the specimens, HHS/CDC will process the specimens in its BSL–4 laboratory and test the specimens by an antigen-detection enzyme-linked immunosorbant assay (ELISA) or other appropriate methodology. Each specimen will be held for six months. After six months, the specimen will be disposed of following established HHS/CDC protocol. Based on information supplied by the commercial laboratory, HHS/CDC estimates that between 100 and 150 specimens per year are expected to be received and tested. Results will be provided to the NHP importers. If a positive test result is found, HHS/CDC will ensure that the NHP cohort is not released from HHS/CDC required quarantine until the health status of the full cohort is determined. This testing protocol would be maintained until further notice.

HHS/CDC has chosen to establish this testing service based on the unanticipated loss of the only commercially available antigen-detection ELISA filovirus testing facility. Currently, there are no commercially available assays for filovirus antigen detection in tissue samples and this testing cannot readily be performed in the private sector because the testing requires a BSL–4 laboratory and the reagents are not commercially available. Other factors which contribute to the necessity of the testing service include the limited availability of BSL–4 laboratories, the special expertise required to perform these tests, the lack of commercially-available reagents, the need and requirement for continued and ongoing filovirus testing to protect public health, the negative effect on science, education and exhibition if imports of NHPs are disrupted, and the lack of other testing alternatives.

Nothing in this proposal is intended to prohibit a private sector facility from developing the capability and offering this same service in the future. The testing of non-human primate samples is necessary to prevent and control a potential outbreak of a filovirus infection in imported monkeys and to prevent the potential spread of filoviruses to humans.

IV. User Fees

Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701) (''IOAA'') provides general authority to Federal agencies to establish user fees through regulations. The IOAA sets parameters for any fee charged under its authority. Each charge shall be:

(1) Fair; and
(2) Based on—
  (A) The costs to the Government;
  (B) The value of the service or thing to the recipient;
  (C) Public-policy or interest served; and
  (D) Other relevant facts.

OMB Circular A–25 (''the Circular'') establishes general policy for implementing user fees, including criteria for determining amounts and exceptions, and guidelines for implementation. According to the Circular, its provisions must be applied to any fees collected pursuant to the IOAA authority.

The Circular states that ''[a] user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' The Circular gives three examples of when the special benefit is considered to accrue, including when a Government service: (a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (*e.g.,* receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or (b) provides business stability or contributes to public confidence in the business activity of the beneficiary (*e.g.,* insuring deposits in commercial banks); or (c) is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (*e.g.,* receiving a passport, visa, airman's certificate, or a Customs inspection after regular duty hours).

The Circular sets forth guidelines for determining the amount of user charges to assess. When the Government is acting in its sovereign capacity, user charges should be sufficient to cover the full cost to the Federal Government of providing the service, resource, or good.

The Circular sets forth criteria for determining full cost. ''Full cost includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' Examples of these types of costs include, but are not limited to, direct and indirect personnel costs, including salaries and fringe benefits; physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents; management and supervisory costs; and the costs of enforcement, collection, research, establishment of standards, and regulation. Full costs are determined based on the best available records of the agency.

Agencies are responsible for the initiation and adoption of user charge schedules consistent with the guidance listed in the Circular. In doing so, agencies should identify the services and activities covered by the Circular; determine the extent of the special benefits provided; and apply the principles set forth in the Circular in determining full cost or market cost as appropriate.

Finally, CDC has legal authority to retain collected user fees through its annual appropriations bill. In fiscal year 2012, this authority is provided through the Consolidated Appropriations Act of 2012, Public Law 112–74, 125 Stat. 1069, 1070 (2011).

V. Services and Activities Covered by This User Fee

HHS/CDC is establishing a user fee to recoup the costs associated with performing the required testing. The user fee will cover the costs of the test for filovirus for specimens submitted to HHS/CDC. The following is a list of services and activities that are covered by the user fee:

- Providing information to the participants about the service, including instructions on submission of samples and payment;
- Receiving payment and maintaining account, including distributing funds;
- Tracking the shipment to ensure a safe arrival at HHS/CDC;
- Providing reagents for and performing the antigen-detection test on submitted NHP liver samples in a BSL–4, high-containment facility;
- Performing all provided services in accordance with industry standards, including quality assurance, handling and processing procedures, and hazardous medical waste guidelines; and
- Ensuring that the importer receives the test results in a timely manner.

VI. Analysis of User Fee Charge (Cost to the Government)

HHS/CDC's analysis of costs to the Government is based on the current methodology (ELISA) used to test NHP liver samples. This cost determines the amount of the user fee. HHS/CDC notes that the use of a different methodology or changes in the availability of ELISA reagents will affect the amount of the user fee. HHS/CDC will impose the fee by schedule and will notify importers of changes to the user fee by notice in the **Federal Register**. Importers may also contact HHS/CDC at 404–498–1600 or check its Web site (*http://www.cdc.gov/animalimportation/*) for an up-to-date fee schedule.

In its analysis of cost, HHS/CDC considered five components: (1) The cost of reagents and materials; (2) the cost of the BSL–4 laboratory in reagent production and during the assay; (3) the cost of irradiation of the sample; (4) personnel costs to perform the testing; and (5) administrative costs. The total cost to the Government is summarized in Table 1 followed by a description of each component; all monies reflected are in U.S. Dollars (USD).

TABLE 1—SUMMARY CALCULATIONS OF USER FEE CHARGE-PER-TEST

Components	Costs (USD)
1. Use of reagents and other materials	$100
2. Use of BSL–4 lab facility	112
3. Irradiation (inactivation) of sample	150
4. Personnel costs to conduct testing	145
5. Administrative costs	33
ESTIMATED TOTAL	540
User Fee	540

The first component in the estimate is the cost of the reagent materials and other materials necessary to perform the test. Two reagents are used to prepare the specific antibodies needed in the test. These reagents are not commercially available and must be made in-house by HHS/CDC scientists. Since these reagents are not commercially available, there is no commercial or observable product pricing. HHS/CDC estimates the cost for these reagents to be $70.00. This amount includes the cost of production and validation of the reagents. Material costs include plastic plates, pipettes, and other reagents. These items are available commercially and their cost is estimated at $30.00. Thus, the total estimated cost for this component totals $100.00 per test. This cost can be a bit higher or lower depending on how many tests are run at the same time. If the test requests come in one at a time, then the cost might be above $100, if there is more than one request at a time, the cost might be a bit less than $100. The test calls for the same amount of reagents for one or 3 samples to test.

The second component is the cost of the BSL–4 facility that is used to develop the reagents. We have estimated this cost on the charges made by University of Texas Medical Branch at Galveston (UTMB) of $28 per hour. The UTMB is the only BSL–4 facility in the United States that has developed commercial fees for the use of their labs. In the ELISA methodology, scientists need four hours in the BSL–4 laboratory to process the sample. The cost of this component is $112.00.

The third component in the cost estimate is the cost to inactivate the sample by irradiation in an irradiator. For this component, we estimate the cost to use an irradiator at $30 per hour. This estimate is based on a five-year cost of $300,000 to HHS/CDC to run and maintain the irradiator. Irradiators are extremely expensive to maintain for a number of reasons. Only research facilities have irradiator equipment because of the need to inactivate high-hazard pathogens. Safety restrictions on irradiators are complex and time consuming; requiring frequent, professional safety inspections and complex annual training for all personnel that work with or near the irradiator. Finally, a high level of security must be maintained because the complexities of using irradiators and the specimens being irradiated require access to be controlled and monitored. Typically it takes five hours to inactivate a sample, at a total estimated irradiation cost of $150.

The fourth component of the cost is the hourly wage and benefits of personnel who perform the laboratory tests. We assume that the scientist performing the test is a microbiologist with a masters' degree. Most of the personnel in this category are paid at a GS 11 level. For the purposes of this estimate, we have assumed a pay level of GS 11, Step 3. We set the basic wage at $25.70 per hour, and a benefit of 30% for a total hourly salary of $33.41 an hour (U.S. Office of Personnel Management 2010 General Schedule (GS) Locality Pay Tables for Atlanta; *http://www.opm.gov/oca/11tables/indexgs.asp*). In total, the tests take about 13 hours (four hours in the BSL–4; three hours of irradiation; and six hours running the test with interpretation). However, we assume that the person working on this test will be carrying on other duties simultaneously. Therefore, we assign one-third of the 13 hours of work time to the fourth part, or $145.00 ($434.33/3).

The fifth and final component is the administrative costs related to test result collection and dissemination. The individual responsible for the activities under this component is typically in a supervisory position. The supervisor examines the assay to ensure that the positive and negative tests (quality controls) are accurate, and to ensure that the test was performed according to prescribed scientific standards. The supervisor puts the results on a response form and sends the results to the importer with a copy to CDC's Division of Global Migration and Quarantine (DGMQ). To calculate this cost, we used half an hour of the salary and benefits of a GS 14 level, Senior Health Scientist (601 series). The hourly rate of a GS14, level 3 is $50 (U.S. Office of Personnel Management 2010 General Schedule (GS) Locality Pay Tables for Atlanta; *http://www.opm.gov/oca/10tables/indexgs.asp*). We added 30% of the hourly rate for benefits to total $65.00. Thirty minutes of this individual's time is $33.00.

Total cost: Adding these parts (Table 1) results in a grand total of $540. We note that our results can potentially vary from this figure for a couple of reasons. First, as mentioned already, commercial data are not available for some of the reagents so our calculation of their costs is an estimate and not based on observed market pricing. Second, the costs will vary depending on how many tests are conducted at one time. If multiple tests are run concurrently, then the costs would be a bit less. If only one test is conducted at one time, the costs will be relatively higher. Therefore, we set the cost of reimbursement per test at $540. We feel confident that this is a fair price to the importers because this amount is consistent with the sum charged by the commercial lab of $500.00 that previously performed these tests. We also note that our assumption of the effect of multiple tests is supported by past experience. HHS/CDC receives notification of about 100 to 150 requests performed per year. Although HHS/CDC cannot control the flow of tests and cannot forecast how many tests will be underway at any given point in time, HHS/CDC estimates that the total amount of fees charged will range from about $50,000 to $75,000 per year. The user fee charged for the testing will cover the costs of the test.

HHS/CDC will impose the user fee by schedule. An up-to-date fee schedule is available from the Division of Global

Migration & Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia 30333, 404–498–1600, or [insert url of Web site].

VII. Payment Instructions

HHS/CDC Importers should submit a check or money order in the amount of $540.00 (USD) made payable to Centers for Disease Control and Prevention for each test conducted at the time that specimens are submitted to the CDC for testing. The check(s) should be sent to Centers for Disease Control and Prevention, P.O. Box 15580, Atlanta, GA 30333.

VIII. Regulatory Analyses

A. Required Regulatory Analyses Under Executive Orders 12866 and 13563

We have examined the impacts of the proposed rule under Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). Because the purpose of this rule is to provide a framework to determine a fair fee to charge for a service that has become unavailable in private, commercial markets within the United States, we have determined that the rule will not violate the intent of either of the Executive Orders because it will in no way prevent a private entity from entering the field and providing a similar, privatized service. If any private entity expresses an interest in providing this service, we will strongly encourage them to do so.

B. Regulatory Flexibility Act

We have examined the impacts of the proposed rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). Unless we certify that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This regulatory action is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. The Paperwork Reduction Act of 1995

HHS/CDC has reviewed the information collection requirements of the proposed rule and has determined that the information collection requested in the proposed rule is already approved by the Office of Management and Budget (OMB) under OMB Control No. 0920–0263, expiration date 6/30/2014. The proposed rule does not contain any new data collection or record keeping requirements.

E. National Environmental Policy Act (NEPA)

Pursuant to 48 FR 9374 (list of HHS/CDC program actions that are categorically excluded from the NEPA environmental review process), HHS/CDC has determined that this action does not qualify for a categorical exclusion. In the absence of an applicable categorical exclusion, the Director, CDC, has determined that provisions amending 42 CFR 71.53 will not have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

F. Civil Justice Reform (Executive Order 12988)

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this proposed rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

G. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does 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.''

H. Plain Language Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

I. Conclusion

In accordance with the provisions of Executive Order 12866, this proposed rule was not reviewed by the Office of Management and Budget.

IX. References

1. Centers for Disease Control and Prevention. Update: Ebola-Related Filovirus Infection in Nonhuman Primates and Interim Guidelines for Handling Nonhuman Primates during Transit and Quarantine. Morbidity and Mortality Weekly Report MMWR 1990; 39(2):22–24, 29–30.
2. Roper, W.L. Dear interested party (letter). March 15, 1990. Available upon request: (404) 639–1600.
3. 55 FR 10288, March 20, 1990, ''Importation of Nonhuman Primates: Meeting.''
4. Centers for Disease Control and Prevention. Update: Filovirus Infection in Animal Handlers. Morbidity and Mortality Weekly Report MMWR 1990; 39(13):221.
5. 55 FR 15210, April 20, 1990, Requirement for a Special-permit to Import Cynomolgus, African Green, or rhesus Monkeys into the United States.
6. Roper, W.L. Dear interested party (letter). October 10, 1991. Available upon request: (404) 639–1600.
7. Ksiazek, Thomas G.; Rollin, Pierre E.; Jahrling, Peter B.; Johnson, Eugene; Dalgard, Dan W., and Peters, Clarence J. Enzyme immunosorbent assay for Ebola virus antigens in tissues of infected primates. Journal of Clinical Microbiology. 1992; (304):947–950.
8. Ksiazek, Thomas G. Laboratory diagnosis of filovirus infections in nonhuman primates. Laboratory Animal. 1991; 20(7):34–46.
9. Tipple, M.A. Dear interested party (letter). March 5, 1996. Available upon request: (404) 639–1600.
10. Demarcus, T., Tipple, M., Ostrowski, S., U.S. Policy for Disease Control among Imported Nonhuman Primates, J Infect Dis. (1999) 179 (supplement 1): S281–S282.

List of Subjects in 42 CFR Part 71

Communicable diseases, Public health, Quarantine, Reporting and recordkeeping requirements, Testing, User fees.

For the reasons set forth in the preamble, HHS proposes to amend 42 CFR part 71 as follows:

PART 71—FOREIGN QUARANTINE

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

Authority: Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); section 361–369, PHS Act, as amended (42 U.S.C. 264–272); 31 U.S.C. 9701.

Subpart F—Importations

2. In § 71.53, add paragraph (j) to read as follows:

§ 71.53 Nonhuman primates.

* * * * *

(j) *Filovirus Testing Fee.* (1) Non-human primate importers shall be charged a fee for filovirus testing of non-human primate liver samples submitted to the Centers for Disease Control and Prevention (CDC).

(2) The fee shall be based on the cost of reagents and other materials necessary to perform the testing; the use of the laboratory testing facility; irradiation for inactivation of the sample; personnel costs associated with performance of the laboratory tests; and administrative costs for test planning, review of assay results, and dissemination of test results.

(3) An up-to-date fee schedule is available from the Division of Global Migration & Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia 30333. Any changes in the fee schedule will be published in the **Federal Register**.

(4) The fee must be paid in U.S. dollars at the time that the importer submits the specimens to HHS/CDC for testing.

Dated: January 19, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–2841 Filed 2–9–12; 8:45 am]

BILLING CODE 4163–18–P

Notices

Federal Register
Vol. 77, No. 28
Friday, February 10, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given of a public meeting of the Committee on Adjudication of the Assembly of the Administrative Conference of the United States (ACUS). The meeting will involve discussion of a research report prepared by Professor Lenni B. Benson (New York Law School) and Russell Wheeler (The Governance Institute and Brookings Institution) for ACUS's ''Immigration Adjudication'' project. The committee will meet via a virtual, online Web forum extending over a period of approximately six weeks. Committee members will discuss the research report by posting comments to the forum and reading comments submitted to the forum by other persons. The public may participate by submitting comments electronically or by mail or fax.

DATES: The Web forum will be opened to both members of the Committee on Adjudication and the public for submission and viewing of comments on February 27, 2012 at 9 a.m. The forum will remain open for submission of comments until April 6, 2012 at 5 p.m., unless it is announced on the forum Web site that the discussion has been completed earlier. After the period for receipt of comments has ended, the forum will remain available for viewing but will not accept additional comments.

ADDRESSES: The meeting will have no physical location. It will take place via an online discussion forum on the Administrative Conference Web site, which can be accessed at: *http://www.acus.gov/forum/.* The public may submit comments either electronically through the forum Web site or by mail or fax addressed to the Designated Federal Officer.

FOR FURTHER INFORMATION CONTACT: Funmi E. Olorunnipa, Designated Federal Officer for the Committee on Adjudication, ACUS, 1120 20th Street NW., Suite 706 South, Washington, DC 20036; Telephone 202–480–2080; Fax 202–386–7190.

SUPPLEMENTARY INFORMATION: The research report to be considered at the Web forum was prepared by Professor Lenni B. Benson (New York Law School) and Russell Wheeler (The Governance Institute and the Brookings Institution). The research report presents the findings of a study of potential improvements to the procedures for immigration removal adjudication.

The committee will meet via a virtual, online Web forum extending over a period of approximately six weeks. *See* 41 CFR 102–3.140(e) (permitting meetings conducted ''in whole or part by * * * the Internet''). Committee members will discuss the research report by posting comments to the forum and reading comments submitted to the forum by other members of the committee and the public. All comments will be reviewed prior to posting by the Designated Federal Officer (DFO) acting as forum moderator. This virtual meeting will enable the committee to discuss the committee's business using modern communications tools in an open and transparent fashion.

The public will be able to view all comments on the forum. The public may also participate by submitting comments either electronically or by mail or fax via the contact information provided above. The DFO will review all comments received, both online and through other means of submission. The DFO will post all public comments received, excepting those that contain trade secret or other confidential information, or that are obscene, libelous, threatening, unrelated to the topic being discussed, or otherwise evidently inappropriate for posting. When submitting comments, please bear in mind that, because the Web forum will be moderated, it may take some time for comments to appear on the forum, particularly for comments submitted outside business hours.

The Web forum will be opened to both members of the Committee on Adjudication and the public for submission and viewing of comments on February 27, 2012 at 9 a.m. The forum will remain open for submission of comments until April 6, 2012 at 5 p.m., unless it is announced on the forum Web site that the discussion has been completed earlier. Any earlier closing date will be announced on both the forum Web page and on the ''Immigration Adjudication'' project page at least one week in advance. After the period for receipt of comments has ended, the forum will remain available for viewing but will not accept additional comments.

Complete details regarding the committee's online meeting, the research report and related research documents, and how to participate in the discussion (including information about accessing and navigating the Web forum and submitting comments for the committee's consideration) can be found on the ''Immigration Adjudication'' project Web page on the ACUS Web site. Go to *www.acus.gov* and click on Research > Conference Projects < Immigration Adjudication, or go directly to the following address: *http://www.acus.gov/research/the-conference-current-projects/immigration-adjudication/.*

Dated: February 6, 2012.

David M. Pritzker,

Deputy General Counsel.

[FR Doc. 2012–3091 Filed 2–9–12; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 6, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be

collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Rural Utilities Service

Title: 7 CFR Part 1726, Electric System Construction Policies and Procedures—Electric.

OMB Control Number: 0572–0107.

Summary of Collection: The Rural Electrification Act of 1936, 7 U.S.C. 901 *et.seq.,* as amended, (RE ACT) in Section 4 (7 U.S.C. 904) authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in the several States and Territories of the United States for rural electrification and the furnishing and improving of electric energy to persons in rural areas. These loans are for a term of up to 35 years and are secured by a first mortgage on the borrower's electric system. In the interest of protecting loan security and accomplishing the statutory objective of a sound program of rural electrification, Section 4 of the RE Act further requires that RUS make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed. RUS will collect information using various RUS forms.

Need and Use of the Information: RUS will collect information to implement certain provisions of the RUS standard form of loan documents regarding the borrower's purchase of materials and equipment and the construction of its electric system by contract or force account. The information will be used by RUS electric borrowers, their contractors and by RUS. If standard forms were not used, borrowers would need to prepare their own documents at a significant expense; and each document submitted by a borrower would require extensive and costly review by both RUS and the Office of the General Counsel.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,210.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 104.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–3075 Filed 2–9–12; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Announcement of Competition Under the America COMPETES Reauthorization Act of 2011

AGENCY: Center for Nutrition Policy and Promotion, USDA.

ACTION: Notice.

SUMMARY: To encourage faith-based, community, and other organizations to create inspiring videos about their work to reverse the trend of childhood obesity, this notice announces the Let's Move Faith and Communities prize competition under section 105 of the America COMPETES Reauthorization Act of 2011, Public Law 11–358 (2011).

DATES: Competition begins on or after February 11, 2012, and ends when a winner is announced on or about June 1, 2012, whichever occurs first, unless the term of the contest is extended as provided in this Notice.

FOR FURTHER INFORMATION CONTACT: Robert Post, Deputy Director, Center for Nutrition Policy and Promotion, USDA, (703) 305–7600.

SUPPLEMENTARY INFORMATION: The Let's Move Faith and Communities (''LMFC'') presents: Communities on the Move Video Challenge (the ''Challenge'') is an initiative of Let's Move and the U.S. Department of Agriculture (''USDA''). The Challenge is intended to provide recognition to faith-based institutions, community-based institutions and other non-profit organizations (collectively, ''Contestants'') for creating inspiring videos that showcase activity related to LMFC's mission to reverse the trend of childhood obesity. The goals of the Challenge are to:

(1) Recognize community efforts to help reduce the trend of childhood obesity;

(2) Encourage healthy eating through USDA's MyPlate icon and nutrition information found on *www.ChooseMyPlate.gov;*

(3) Highlight the work of Let's Move Faith and Communities and other organizations engaged in promoting the Let's Move message of healthy lifestyles for kids; and

(4) Increase participation in faith and community based efforts to prevent childhood obesity.

Summary of How To Enter and Judging Criteria

Review the sections below for a more detailed description and important requirements and restrictions.

1. Create an account on *Communities.Challenge.gov* or log in with an existing ChallengePost account.

2. On *Communities.Challenge.gov*, click ''Accept this challenge'' to register your interest in participating. This step ensures that you will receive important challenge updates.

3. After you sign up on *Communities.Challenge.gov* a confirmation email will be sent to the email address you provided. Use the confirmation email to verify your email address. As a registered Contestant, you will then be able to enter the Challenge by submitting an application that conforms to the requirements set forth herein (a ''Submission'').

4. Create a Video that is between one and three minutes long, has a clear connection to *Let's Move,* and describes how the organization entering has worked to improve the wellness of children in congregation(s) or community(ies). The organization may operate at the national or local level. Videos must focus on topics in one or more of three areas of interest: healthy eating, physical activity, and/or access to healthy, affordable food. At some point in the video, the video must direct viewers to *www.letsmove.gov* for more information.

5. Confirm that you have read and agreed to these Official Rules. Submit your video on *Communities.Challenge.gov* between February 11, 2012 at 10 a.m. EST and April 6, 2012 at 5 p.m. EDT by including a link to the video on *YouTube.com* or *Vimeo.com*, a text description of the activities showcased in the video (300 words or less) and a transcript of the video dialogue. Upload consent forms for everyone who appears in your video, regardless of age. Upload

a copyright release from the creator of the video.

Nine (9) winners will be chosen. The First Prize winner and seven (7) Honorable Mention winners will be selected by a panel of judges. One (1) Popular Choice winner will be selected through public voting.

For selection of the First Prize and Honorable Mention winners, the internal panel of judges will judge each eligible Submission based on the following three criteria:

Quality of the Idea: Video must convey at least one of the three *Let's Move* areas of interest: healthy eating, physical activity, and/or access to healthy affordable food. Submissions that connect to multiple areas of interest are especially encouraged. The video should also have a clear connection to the mission of *Let's Move.* The idea or program highlighted in the video should be creative, and should involve a collective group effort focused on the wellness of children. At some point in the video, Contestants must direct viewers to *www.letsmove.gov* for more information.

Communication of the Idea: Video should include content that is compelling and instructive. The video should also (a) offer clear visual and audio quality, (b) encourage team-building and collaboration, and (c) not compromise the health or safety of the video participants.

Potential Impact of the Idea: The idea or program represented in the video should be replicable by other entities, and adaptable to a variety of settings and resource levels. The idea or program represented in the video should be sustainable, and support positive behaviors to reduce childhood obesity. The video should include personal accounts (for example, testimonials, success stories, or individual reports) conveying how the idea or program highlighted has impacted health and wellness.

The public will vote on the Submissions on *Communities.Challenge.gov* between February 11, 2012 at 10 a.m. EST and May 11, 2012 at 5 p.m. EDT to determine the Popular Choice winner. Public voting will occur daily throughout the Challenge Submission Period. While Submissions will be accepted at any time during the Challenge Submission Period, Contestants should be aware that as a result of daily voting, earlier entered Submissions may have a higher chance of winning the Popular Choice award.

1. Eligibility

To be eligible to win a prize under this Challenge, an organization—

a. Shall have registered to participate in the Challenge under these Official Rules;

b. Shall have complied with all the requirements set forth herein;

c. Shall be a faith-based institution, community-based institution, or other non-profit organization that, at the time of entry, is domiciled in the United States of America, has been duly organized and validly exists;

d. May not be a government or for-profit entity.

Individuals are not eligible to enter Submissions for this Challenge.

A Contestant shall not be deemed ineligible because the Contestant used Federal facilities or consulted with Federal employees during the Challenge if the facilities and employees are made available to all Contestants participating in the Challenge on an equitable basis.

Let's Move, the USDA, ChallengePost, Inc. (collectively the ''Promotion Entities'') or any of the Promotion Entities' respective affiliates, subsidiaries, advertising agencies, or any other company or entity involved with the design, production, execution, or distribution of the Challenge are not eligible.

The program highlighted in the Video may be a program that is in whole or in part Federally funded provided both of the following two conditions are met:

- An eligible entity, as described above, must have full responsibility for expending the Federal funds to implement the highlighted program; and
- No Federal funds can be used to develop a Contestant's Submission unless such use is consistent with the grant award, or other applicable Federal funds awarding document. If a grantee using Federal funds enters and wins this Challenge, the prize monies will need to be treated as program income for purposes of the original grant in accordance with applicable Office of Management and Budget Circulars.

Federal contractors may not use Federal funds from a contract to develop a Submission for this Challenge.

Contestants led by or whose highlighted program is led by a Federal employee are eligible provided all of the following criteria are met:

- The Federal employee cannot be an employee of the USDA Center for Nutrition Policy and Promotion (USDA–CNPP) or the USDA Center for Faith-Based and Neighborhood Partnerships (USDA–CFBNP). Nor may the Federal employee be an immediate family member of any employee of USDA–CNPP or USDA–CFBNP;
- The Federal employee's involvement cannot be within the scope of his/her Federal employment;
- The Federal employee may not work on Contestant's Submission during his/her Federal employment assigned duty hours, and may not use Federal facilities in the preparation of Contestant's Submission unless those facilities are made available to all Challenge Contestant's on an equitable basis; and
- The Federal employee has fully complied with all applicable government ethics requirements for Federal employees. If questions arise about the applicability of or compliance with ethics requirements, the Federal employee is encouraged to consult his/her designated agency ethics officer.

The Challenge is subject to all applicable Federal laws and regulations. Participation constitutes Contestant's full and unconditional agreement to these Official Rules and Sponsor's and Administrator's decisions, which are final and binding in all matters related to the Challenge.

2. Sponsor and Administrator

Sponsor: USDA Center for Nutrition Policy and Promotion, 3101 Park Center Drive, 10th Floor Alexandria, VA 22302–1594.

Administrator: ChallengePost, Inc., 425 W. 13th Street, Suite #504, New York, NY 10014.

The role of the Sponsor is to make all decisions related to the development, management, and implementation of the Challenge. The role of the Administrator is to carry out the Challenge per the direction of the Sponsor.

3. Challenge Submission Period

The Challenge Submission Period begins on February 11, 2012 at 10 a.m. EST and ends on April 6, 2012 at 5 p.m. EDT (the ''Challenge Submission Period''). Administrator's computer is the official time-keeping device for this Challenge.

Public voting will occur daily throughout the Challenge Submission Period. While Submissions will be accepted at any time during the Challenge Submission Period, Contestants should be aware that as a result of daily voting, earlier entered Submissions may have a higher chance of winning the popular choice award.

4. How To Enter and Submission Requirements

a. Registration and Submission:

(1) Create an account on *Communities.Challenge.gov* or log in with an existing ChallengePost account. Creating an account is free.

(2) On *Communities.Challenge.gov,* click ''Accept this challenge'' to register your interest in participating. This step ensures that you will receive important challenge updates.

(3) After you sign up on *Communities.Challenge.gov* a confirmation email will be sent to the email address you provided. Use the confirmation email to verify your email address. As a registered Contestant, you will then be able to enter a Submission.

(4) Create a Video that is between one and three minutes long, has a clear connection to *Let's Move,* and describes how the organization entering has worked to improve the wellness of children in congregation(s) or community(ies). The organization may operate at the national or local level. Videos must focus on topics in one or more of three areas of interest: (a) healthy eating, (b) physical activity, and/or (c) access to healthy affordable food. At some point in the video, the video must direct viewers to *www.letsmove.gov* for more information.

(5) Enter a Submission by filling out the submission form on *Communities.Challenge.gov.* As part of a complete Submission each contestant must provide:

- The title of the Video,
- A link to the Video on *YouTube.com* or *Vimeo.com,*
- A text description of the organization's idea or program featured in the Video (300 words or less),
- A transcript of the dialogue in the Video,
- Confirmation that Contestant has read and agrees to these Official Rules,
- Image Release forms from all individuals that appear in the Video, and
- Copyright Release from the creator of the Video.

A Submission will not be considered complete and eligible to win prizes if it does not include all of the required items. All completed Video Consent Forms and Copyright Release Forms must be uploaded as part of the submission form on *Communities.Challenge.gov.*

b. Submission Requirements:

(1) The video must be no shorter than one minute and no longer than three minutes. Videos that do not meet these time requirements may be disqualified.

(2) Submissions must include a text description, no more than 300 words in length, of the program highlighted in the video. A Submission may be disqualified if the activities presented in the Video are not the same or closely related to those described in the text description.

(3) Submissions must also include a transcript of the video's dialogue. A Submission may be disqualified if the Video's dialogue is not the same or closely related to the dialogue in the transcript.

(4) The Video must describe how the activities in the video connect to *Let's Move* and describe how the Contestant has worked to improve the wellness of children in congregation(s) or community(ies) in the United States. Contestant organization may operate at the national or local level.

(5) The Video must focus on topics in one or more of the three areas of interest: healthy eating, physical activity, and/or access to healthy, affordable food. Videos that address multiple areas are especially encouraged.

(6) At some point in the video, the video must direct viewers to *www.letsmove.gov* for more information.

(7) Submissions must include one uploaded file combining hand-signed Image Release for each individual appearing in the Video and the Copyright Release Form from the Video's creator.

- Any individuals appearing in a Video submitted by a Contestant must sign an Image Release form indicating their consent to appear. Minors may appear in a Video if their parent or legal guardian also signs their Image Release form.
- The person who creates the Video must sign a Copyright Release form authorizing Contestant to use the Video in entering the Challenge and authorizing USDA and *Let's Move* to use the Video in promoting the mission of *Let's Move* and working to reduce childhood obesity.
- Failure to include any of the required Image Release or Copyright Release forms will result in Contestant's Submission being deemed ineligible.

(8) The Contestant cannot make any changes or alterations to the Submission once the Challenge Submission Period has ended.

(9) A Contestant may not submit more than one Submission describing the same program or activities.

(10) Submissions in which Sponsor and/or Administrator's sole discretion are determined to be substantially similar to a prior submitted entry in the Challenge will be disqualified, or if entered by the same Contestant, the Contestant may be required to choose one Submission to enter.

(11) The video cannot contain brand names or trademarks unless these entities are official partners in the program activities described. If a video uses the *Let's Move* logo, the use should be consistent with the guidance found at *http://www.letsmove.gov/logo-and-usage.*

(12) Submissions must be original, be the work of the Contestant, and must not violate the rights of other parties. Each Contestant represents and warrants that Contestant is the sole author and owner of the Submission, or if not the sole owner has received a Copyright Release from the author of the Submission, that the Submission is wholly original with the Contestant or individual who has signed the Copyright Release, that it does not infringe any copyright or any other rights of any third party of which the Contestant is aware, and is free of malware.

(13) The Administrator has the right to request access to the Video file to verify any criteria about the Submission.

(14) The Video must not contain any material that is inappropriate, indecent, obscene, hateful, defamatory, slanderous, libelous, or in any way disparaging. The Video must not contain any material that promotes bigotry, racism, hatred, or harm against any group or individual, or that promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age. Submissions containing any of the listed prohibited material or any matter which in the sole discretion of the Sponsor, Administrator and Judges is in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, which disparages any individual or group of individuals, which contains messaging that is inconsistent with the *Let's Move* goal to reverse the trend of childhood obesity or with the 2010 Dietary Guidelines for Americans and MyPlate, or which adversely affects the reputation of the Sponsor will not be accepted. If the Sponsor, Administrator, or Judges, in their discretion, find any Submission to be unacceptable, then such Submission shall be deemed disqualified.

(15) All Submissions must be in English.

(16) The Video cannot have been submitted previously in a promotion or contest of any kind.

(17) The Video should not include any personal identification information about those in the Video (*e.g.,* full name, address, social security number, birth date, *etc.*).

(18) The Video must not contain material that violates or infringes another's rights, including but not limited to privacy, publicity, or intellectual property rights, or material that constitutes copyright or license infringement.

(19) The Video must not contain material that violates any applicable law.

c. Rights To Use Submissions:

Each Contestant grants to *Let's Move,* USDA, and others acting on behalf of *Let's Move* and USDA, an irrevocable, royalty-free, non-exclusive worldwide license to use, copy for use, distribute, display publicly, perform publicly, create derivative works, and license others to do so for the purpose of the Challenge and/or for the purpose of educating the public about reversing childhood obesity and/or the three areas of interest, healthy eating, physical activity, and/or access to healthy affordable food, until five years after the announcement of winners. This license includes posting or linking to the Submission on the official *Let's Move,* USDA, and Administrator Web sites and making it available for use by the public.

5. Display of Submissions and Public Voting To Determine the Popular Choice Winner in Each Category

Submissions will be posted on *Communities.Challenge.gov* on a rolling basis after being screened by the Sponsor and Administrator for eligibility, accuracy of messaging, and compliance with all Submission requirements described in Section 4. Submissions will not be posted until the completed Image Release Forms and Copyright Release Form are received, as described in Section 4b. All Contestants will have equal access to Submissions posted on the Web site. Non-Contestants interested in the Challenge are also encouraged to register on *Communities.Challenge.gov.* Registration will be required in order to receive updates on the Challenge and to vote on your favorite Submissions to determine the Popular Choice winner. The public voting will take place between on or about February 11, 2012 at 10 a.m. EST and May 11, 2012 at 5 p.m. EDT.

Public voting will occur daily throughout the Challenge Submission Period. While Submissions will be accepted at any time during the Challenge Submission Period, Contestants should be aware that as a result of daily voting, earlier entered Submissions may have a higher chance of winning the popular choice award.

Each registered visitor is able to place one vote per day. There will be *one* Popular Choice award. In the event of a tie, an internal panel will choose the winner. Use of an automated process or similar device to submit an electronic vote is strictly prohibited. Any attempt to circumvent the one vote limit per Submission per day or to use an automated vote process will subject all votes from the person to disqualification. If a Contestant receives multiple and/or irregular votes from the same user or users, including but not limited to votes generated by a robotic, programmed, script, macro, other automated means or other source, the Sponsor and/or Administrator reserves the right to disqualify the Contestant in their sole discretion. If the voting process fails to operate properly or appears to be tampered with or tainted with errors, fraud, or unfair practices, the Sponsor and Administrator in their sole discretion reserve the right to use another means to determine the Popular Choice winner (*e.g.,* appointing a panel of judges).

Contestants may not pay people or provide any other type of consideration in exchange for votes, and any Contestant who violates this rule will be disqualified. Public votes may be displayed on the Challenge Web site, on a real-time basis, before being verified for integrity. These unverified votes do not necessarily reflect accurately the Popular Choice winner. The Popular Choice winner will be the Contestant who is contacted directly by the Administrator or Sponsor after votes have been verified. Sponsor reserves the right to modify the voting period at any time for any reason.

6. Judges and Winner Selection

A judging panel will be selected by the Sponsor and consist of 5–9 experts, all of whom will be Federal employees. Judges will be from *Let's Move,* USDA–CNPP, USDA–CFBNP, and the U.S. Department of Health and Human Services Center for Faith-Based and Neighborhood Partnerships. The judging panel will judge the Submissions on the criteria identified below to select the First prize and Honorable Mention winners. All judging will take place between on or about April 16, 2012 at 10 a.m. EDT and on or about May 11, 2012 at 5 p.m. EST.

The following information details the commitment of judges:

- Judges will be fair and impartial.
- A judge may not have a personal or financial interest in, or be an employee, officer, director, or agent of any entity that is a Contestant in the Challenge. Nor may a judge be an immediate family member of an officer, director, or agency of any entity that is a Contestant in the Challenge.
- Judges will fully comply with all applicable government ethics requirements for Federal employees. If questions arise about the applicability of or compliance with ethics requirements, judges are encouraged to consult with their designated agency ethics officer.

Odds of winning depend on the number of eligible Submissions received and the quality of Submissions. Odds of winning the popular choice award may also be affected by the timing of entry.

First Prize and Honorable Mention Awards

The judging panel will evaluate each Submission on the following three criteria:

Quality of the Idea: Video must convey at least one of the three *Let's Move* areas of interest: Healthy eating, physical activity, and/or access to healthy affordable food. Submissions that connect to multiple areas of interest are especially encouraged. The video should also have a clear connection to the mission of *Let's Move.* The idea or program highlighted in the video should be creative, and should involve a collective group effort focused on the wellness of children. At some point in the video Contestant's must direct viewers to *www.letsmove.gov* for more information.

Communication of the Idea: Video should include content that is compelling and instructive. The video should also offer clear visual and audio quality, encourage team-building and collaboration, and not compromise the health or safety of the video participants.

Potential Impact of the Idea: The idea or program represented in the video should be replicable by other entities, and adaptable to a variety of settings and resource levels. The idea or program represented in the video should be sustainable, and support positive behaviors to reduce childhood obesity. The video should include personal accounts (for example, testimonials, success stories, or individual reports) conveying how the idea or program highlighted has impacted health and wellness.

The eight (8) Contestants whose Submissions earn the highest and second, third, fourth, fifth, sixth, seventh, and eighth-highest overall scores will win, respectively, First Prize and Honorable Mention prizes identified below in Section 8. In the event of a tie, winners will be selected based on the criteria described in (1), then (2), and finally (3). If there is still a tie then the winner will be selected based on a vote by the judging panel.

7. Verification of Potential Winners

All potential challenge winners are subject to verification by sponsor and/or administrator whose decisions are final and binding in all matters related to the

challenge. Potential winners must continue to comply with all terms and conditions of these Official Rules, and winning is contingent upon fulfilling all requirements. The potential winners will be notified by email, telephone, or mail after the date of the judging. The potential winners will be required to sign and return to Sponsor, within ten (10) days of the date notice is sent, an Affidavit of Eligibility and Liability/Publicity Release (except where prohibited) in order to claim a prize. If a potential winner of any prize cannot be contacted, fails to sign and return the Affidavit of Eligibility and Liability/Publicity Release within the required time period (if applicable), or if the prize or prize notification is returned as undeliverable, the potential winner forfeits prize. In the event that a potential winner of a Challenge prize is disqualified for any reason, Sponsor may award the applicable prize to the Contestant whose Submission earned the highest score of the remaining of the eligible entries.

8. Prizes

Winner	Prize	Quantity
First Prize	• An invitation for up to two representatives from the Contestant to attend a *Let's Move* related event in Washington, D.C. • Contestant will be provided the opportunity to present its winning Video at the event. • A $1,000 travel stipend. • Contestant's winning Video will be featured on the *Let's Move* Web site.	1
Popular Choice	• An invitation for up to two representatives from the Contestant to attend a *Let's Move* related event in Washington, DC. • Contestant will be provided the opportunity to present its winning Video at the event. • A $1,000 travel stipend. • Contestant's winning Video will be featured on the *Let's Move* website.	1
Honorable Mentions	• An invitation for up to two representatives from the Contestant to attend a *Let's Move* related event in Washington, DC. • Videos will be featured on the Let's Move Web site.	7

Prizes may be added or increased up until April 6, 2012. Sponsor may award less than the stated number of prizes if not enough eligible and verifiable Submissions are received. All Federal, state and local taxes are the sole responsibility of the winner.

After prizes are awarded and the Challenge is completed, Sponsor and judges may, with a Contestant's approval, independently consider further developing winning submissions for educational or other purposes.

Prizes will be awarded to organizations, and it will be up to the winning organizations and their representatives to allocate the prize appropriately.

9. Entry Conditions and Release

By entering, each Contestant agrees to:

(a) Comply with and be bound by these Official Rules and the decisions of the Sponsor, Administrator, and judges which are binding and final in all matters relating to this Challenge;

(b) Assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from the Contestant's participation in the Challenge, whether the injury, death, damage, or loss arises through negligence or otherwise. In this paragraph, ''related entity'' means a contractor or subcontractor at any level, and a supplier, user, customer, cooperating party, grantee, investigator, or detailee. Provided, however, that Contestants are not required to waive claims arising out of the unauthorized use or disclosure by the Sponsor and/or Administrator of the intellectual property, trade secrets, or confidential business information of the Contestant;

(c) Be responsible for obtaining their own liability insurance to cover claims by any third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in the Challenge, and claims by the Federal Government for damage or loss to Government property resulting from such an activity; and

(d) Indemnify the Federal Government against third party claims for damages arising from or related to Challenge activities.

10. Publicity

Except where prohibited, participation in the Challenge constitutes the winning Contestants' consent to the use of its name, description, key program details, opinions, and/or hometown and state by the Sponsor and its agents for promotional purposes in any media, worldwide, without further payment or consideration.

11. General Conditions

Sponsor and Administrator reserve the right to cancel, suspend and/or modify the Challenge, or any part of it, if any fraud, technical failures, or any other factor impairs the integrity or proper functioning of the Challenge.

Sponsor and/or Administrator reserve the right in their sole discretion to disqualify Contestant it finds to be tampering with the entry process or the operation of the Challenge or to be acting in violation of these Official Rules or any other promotion or in an unsportsmanlike or disruptive manner. Any attempt by any person to deliberately undermine the legitimate operation of the Challenge may be a violation of criminal and civil law, and, should such an attempt be made, Sponsor and/or Administrator reserves the right to seek damages from any such person to the fullest extent permitted by law. Sponsor and/or Administrator's failure to enforce any term of these Official Rules shall not constitute a waiver of that provision. Sponsor and Administrator are not responsible for, nor are they required to count, incomplete, late, misdirected, damaged, unlawful or illicit votes, including those secured through payment, votes achieved through automated means or by registering more than one email account and name, using another Contestant's email account and name, as well as those lost for technical reasons or otherwise.

12. Limitations of Liability

The Sponsor and Administrator are not responsible for:

a. Any incorrect or inaccurate information, whether caused by Contestants, printing errors or by any of the equipment or programming associated with or utilized in the Challenge;

b. Technical failures of any kind, including, but not limited to malfunctions, interruptions, or disconnections in phone lines or network hardware or software;

c. Unauthorized human intervention in any part of the entry process or the Challenge;

d. Technical or human error which may occur in the administration of the Challenge or the processing of entries; or

e. Any injury or damage to persons or property which may be caused, directly or indirectly, in whole or in part, from Contestant's participation in the Challenge or receipt or use or misuse of any prize.

If for any reason a Contestant's entry is confirmed to have been erroneously deleted, lost, or otherwise destroyed or corrupted, Contestant's sole remedy is another entry in the Challenge.

13. Disputes

Contestant agrees that:

a. Any and all disputes, claims and causes of action arising out of or connected with this Challenge, or any prizes awarded, other than those concerning the administration of the Challenge or the determination of winners, shall be resolved individually, without resort to any form of class action;

b. Any and all disputes, claims and causes of action arising out of or connected with this Challenge, or any prizes awarded, shall be resolved exclusively in an appropriate judicial or administrative forum of the United States; and

c. Any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred, including costs associated with entering this Challenge, but in no event attorneys' fees. All issues and questions concerning the construction, validity, interpretation and enforceability of these Official Rules, or the rights and obligations of the Contestant and Sponsor in connection with the Challenge, shall be governed by, and construed in accordance with, the laws of the United States Federal Government, without giving effect to any choice of law or conflict of law rules that would cause the application of the laws of any jurisdiction other than the United States Federal Government.

14. Privacy

Sponsor collects personal information from you when you enter the Challenge. The information collected is subject to the ChallengePost privacy policy located at *www.challengepost.com/privacy.*

15. Challenge Results

For Challenge results, go to *Communities.Challenge.gov* on or about June 1, 2012.

16. Questions

For questions about these Official Rules contact USDA Center for Nutrition Policy and Promotion at (703) 305–7600 and include ''Communities on the Move'' in the subject line.

Dated: February 6, 2012.

Raj Anand,

Executive Director, Center for Nutrition Policy and Promotion.

[FR Doc. 2012–3079 Filed 2–9–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0131]

Notice of Request for Extension of Approval of an Information Collection; PPQ Form 816; Contract Pilot and Aircraft Acceptance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection for contract pilot and aircraft acceptance associated with Plant Protection and Quarantine domestic, emergency, and biological control programs.

DATES: We will consider all comments that we receive on or before April 10, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2011–0131–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0131, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0131* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on contract pilot and aircraft acceptance, contact Mr. Timothy Roland, Director, Aircraft and Equipment Operations, PPQ, APHIS, 22675 N. Moorefield Road, Bldg. 6430, Edinburg, TX 78541–5033; (956) 205–7710. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: PPQ Form 816; Contract Pilot and Aircraft Acceptance.

OMB Number: 0579–0298.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq*) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and noxious weeds that are new to or not widely distributed within the United States. This authority has been delegated to the Administrator, Animal and Plant Health Inspection Service (APHIS).

As part of this mission, the Plant Protection and Quarantine (PPQ) program, APHIS, responds to introductions of plant pests to eradicate, suppress, or contain them through various programs in cooperation with State departments of agriculture and other government agencies. These programs may include release through aerial application of treatments to control plant pests.

APHIS contracts for these services, and prior to any aerial applications, requests certain information from the contractor and/or contract pilots to ensure that the work will be done according to contract specifications. Among other things, APHIS asks to see aircraft registration, the aircraft's airworthiness certificate, the pilot's license, the pilot's medical certification, the pilot's proof of flight review, the pilot's pesticide applicator's license, and the aircraft logbook. APHIS transfers information from these documents to PPQ Form 816, which is then signed by the APHIS official collecting the information and the contractor or contract pilot, indicating acceptance of the pilot and aircraft for the job.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.266666667 hours per response.

Respondents: Contractors and/or pilots of aircraft.

Estimated annual number of respondents: 15.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 15.

Estimated total annual burden on respondents: 4 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of February 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–3188 Filed 2–9–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0087]

Notice of Decision To Authorize the Importation of Pomegranate From India Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of fresh pomegranate fruit from India. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh pomegranate fruit from India.

DATES: Effective date: February 10, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, RPM, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may authorize the importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on September 29, 2011 (76 FR 60450, Docket No. APHIS–2011–0087), in which we announced the availability, for review and comment, of a PRA that evaluates the risks associated with the importation into the continental United States of fresh pomegranate fruit (*Punica granatum* L.) from India. We solicited comments on the notice for 60 days ending on November 28, 2011. We did not receive any comments by that date. Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to authorize the importation into the continental United States of fresh pomegranate fruit from India subject to the following phytosanitary measures:

- The fresh pomegranate fruit may be imported into the continental United States in commercial consignments only;
- The fresh pomegranate fruit must be irradiated in accordance with 7 CFR part 305 with a minimum absorbed dose of 400 Gy;
- If the irradiation treatment is applied outside the United States, each consignment of fresh pomegranate fruit must be jointly inspected by APHIS and the national plant protection organization (NPPO) of India and accompanied by a phytosanitary certificate attesting that the fruit received the required irradiation treatment and was inspected and found free of the mite *Tenuipalpus granati,* the false spider mite *Tenuipalpus punicae,* and the bacterium *Xanthomonas axonopodis* pv. *punicae;*
- If irradiation is applied upon arrival in the United States, each consignment of fresh pomegranate fruit must be inspected by the NPPO of India prior to departure and accompanied by a phytosanitary certificate with an additional declaration that the fruit was inspected and found free of the mite *Tenuipalpus granati,* the false spider mite *Tenuipalpus punicae,* and the bacterium *Xanthomonas axonopodis* pv. *punicae;* and
- The fresh pomegranate fruit is subject to inspection upon arrival at the U.S. port of entry.

[1] To view the notice and the PRA, go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0087.*

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at http://www.aphis.usda.gov/favir). In addition to these specific measures, fresh pomegranate fruit from India will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables. Further, for fruits and vegetables requiring treatment as a condition of entry, the phytosanitary treatments regulations in 7 CFR part 305 contain administrative and procedural requirements that must be observed in connection with the application and certification of specific treatments.

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

Done in Washington, DC, this 6th day of February 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–3191 Filed 2–9–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0130]

ArborGen, LLC; Availability of an Environmental Assessment for Controlled Release of a Genetically Engineered Eucalyptus Hybrid

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a proposed controlled field release of a genetically engineered clone of a *Eucalyptus* hybrid. The purpose of the field release is to assess the effectiveness of gene constructs intended to confer cold tolerance, to test the efficacy of genes introduced to alter lignin biosynthesis, to test the efficacy of genes designed to alter growth, and to test the efficacy of genes designed to alter flowering. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before March 12, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0130-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0130, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0130* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0942. To obtain copies of the environmental assessment, contact Ms. Cynthia Eck at (301) 734–0667; email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release in the environment of a regulated article.

On February 21, 2011, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 11–052–101rm) from ArborGen, LLC, in Summerville, SC, for a controlled field release of genetically engineered *Eucalyptus* hybrids in six locations encompassing a total of 14.7 acres in the States of Alabama, Florida, Mississippi, and South Carolina. Five of these locations currently have active APHIS permits (08–011–106rm, 08–014–101rm, 09–070–10rm, 10–112–101r, and 11–041–101rm) for environmental release of genetically engineered *Eucalyptus* hybrids in Alabama, Florida, Mississippi, and South Carolina. The sixth site in South Carolina has been listed as a holding site for genetically engineered trees in previous APHIS permits and notifications and is a new location for the release of genetically engineered *Eucalyptus.* ArborGen is requesting that trees be allowed to flower at four locations in Alabama, Florida and Mississippi. At two locations in South Carolina, ArborGen has requested to release trees in containers and have indicated they will not allow these trees to flower at these locations.

Permit application 11–052–101rm describes *Eucalyptus* trees derived from a hybrid of *Eucalyptus grandis* × *Eucalyptus urophylla.* The purpose of the field tests is to assess the effectiveness of gene constructs intended to confer cold tolerance; to test the efficacy of genes introduced to alter lignin biosynthesis; to test the efficacy of genes designed to alter growth; and to test the efficacy of genes designed to alter flowering. In addition, the trees have been engineered with a selectable marker that confers resistance to the antibiotic kanamycin. These DNA sequences were introduced into *Eucalyptus* trees using disarmed *Agrobacterium tumefaciens.*

The subject *Eucalyptus* trees are considered regulated articles under 7 CFR part 340 because they were created using donor sequences from plant pests.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risks associated with the proposed release under permit of these genetically engineered *Eucalyptus* trees, APHIS has prepared an environmental assessment (EA). The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The EA may be viewed on the *Regulations.gov* Web site or in our reading room. (Instructions for accessing *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this notice.) In addition, copies may be obtained by calling or writing to the

individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 6th day of February 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–3189 Filed 2–9–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0010]

Information Sharing With Agency Stakeholders; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Request for information and notice of public meeting.

SUMMARY: We are informing the public that the Animal and Plant Health Inspection Service (APHIS) is soliciting feedback from our stakeholders in several areas having to do with our partnerships with businesses, academia, and other levels of government. We are also announcing that APHIS is hosting a public meeting to share information about the Agency's budget, process improvement efforts, and modernization initiatives and to provide an opportunity for stakeholders to share their thoughts on partnerships and the Agency's critical services.

DATES: The meeting will be held on February 27, 2012, from 1 p.m. to 3 p.m. We will accept stakeholder feedback on the specific topics raised in this notice until March 23, 2012.

ADDRESSES: The meeting will be held in the Jefferson Auditorium at the USDA South Building, 1400 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Hallie Zimmers, Stakeholder Liaison, Legislative and Public Affairs, APHIS, Room 1153, 1400 Independence Avenue SW., Washington, DC 20250; phone (202) 720–0378.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is currently undertaking a variety of efforts to transform itself into a customer-focused, high-performing organization. In this context, USDA's Animal and Plant Health Inspection Service (APHIS) is focusing on ways to share timely information with its stakeholders and communicate the value APHIS places on our many and diverse stakeholder relationships.

As part of a larger effort to enhance stakeholder communication, APHIS is hosting an open meeting with all interested stakeholders to talk about the Agency's budget, process improvement efforts, and modernization initiatives and to provide stakeholders with an opportunity to share their thoughts on partnerships and the Agency's critical services. While we welcome comments and feedback on all aspects of APHIS-stakeholder partnerships and the Agency's critical services, we are particularly interested in our stakeholders' thoughts on the topics discussed below.

In this era of shrinking budgets, Federal Agencies are facing hard choices about the delivery of important services, and APHIS is no exception. Some decisions have already been made with respect to our programs, and we anticipate more difficult choices will be required in the future. This means that it will be more important than ever for APHIS to understand its stakeholders' concerns and priorities.

1. As we take stock of our current programs and services and consider where, if necessary, there should be strategic cuts or across-the-board reductions, we are interested in hearing from stakeholders about those APHIS activities you most value and where and how you think the Agency might make responsible changes.

- In your opinion, what are the three to five most essential services APHIS provides and why?
- Please share any feedback regarding how you feel we can best structure or provide these services.
- When you or your members seek APHIS' assistance, do you primarily rely on our local field offices, State offices, regional offices, research centers and field stations, or headquarters for support? Why?
- As we continue to look at ways to improve our processes and enhance customer service, what recommendations do you have for specific efforts we could undertake in 2012?

2. Given limited resources, APHIS is seeking new ways to enhance existing partnerships and build new ones.

- How might we strengthen current partnerships or collaborate in new ways to accomplish critical mission activities?
- Do you see opportunities for APHIS, State governments, tribes, industry and academia to redefine traditional roles to find efficiencies or improvements in the way we collectively safeguard American agriculture? As best you can, please be specific or provide examples.

3. Please provide any additional comments or feedback you would like to share with APHIS' leadership, especially as it relates to how you like to see APHIS management communicate with you at the local, regional, and national level. Please be specific.

You may submit your thoughts on these questions by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT** or by using the Web form provided on the APHIS stakeholder information Web site at *http://www.aphis.usda.gov/stakeholders/*. Responses may also be submitted via email to *Partnerships@aphis.usda.gov.*

On-site registration will begin at noon on the day of the meeting. All participants must register. If you require special accommodations, such as a sign language interpreter, or if you have any questions regarding the meeting, please call or write the person listed under **FOR FURTHER INFORMATION CONTACT**.

If you are unable to attend the meeting in person, it will be streamed on the Internet as a live Webcast. To view the Webcast, go to *http://www.aphis.usda.gov/stakeholders/* and follow the instructions to access the streaming video and audio in ''listen only'' mode. We recommend you connect at least 5 minutes prior to the start of the meeting. A recording of the Webcast will be posted to the APHIS stakeholder information page the following day, and a written transcript will be posted to the page as soon as it is available.

Persons attending the February 27, 2012, meeting in Washington, DC, will be required to sign in at the entrance to the USDA South Building located at 14th Street and Independence Avenue, entering through Wing 7. Photo identification is required to gain access to the building. The nearest Metro station is the Smithsonian station on the Blue/Orange Lines, which is within easy walking distance.

Done in Washington, DC, this 6th day of February 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–3186 Filed 2–9–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0003]

Codex Alimentarius Commission: Meeting of the Codex Committee on General Principles

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) is sponsoring a public meeting on March 28, 2012. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 27th session of the Codex Committee on General Principles (CCGP) of the Codex Alimentarius Commission (Codex), which will be held in Paris, France, April 2–6, 2012. The Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 27th session of the CCGP and to address items on the agenda.

DATES: The public meeting is scheduled for Wednesday, March 28, 2012, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held at the Jamie L. Whitten Building, USDA, 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250.

Documents related to the 27th session of CCGP will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/*.

Karen Stuck, U.S. Delegate to the 27th session of the CCGP, invites U.S. interested parties to submit their comments electronically to the following email address: *USCODEX@fsis.usda.gov.*

Call-In Number

If you wish to participate in the public meeting for the 27th session of the CCGP by conference call, please use the call-in number and participant code listed below:

Call-in Number: 1 (888) 858–2144.

Participant Code: 6208658.

For Further Information About the 27th Session of the CCGP Contact: Karen Stuck, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, telephone: (202) 205–7760, fax: (202) 720–3157 email: *USCODEX@fsis.usda.gov.*

For Further Information About the Public Meeting Contact: Barbara McNiff, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250. Telephone: +1 (202) 205–7760, fax: +1 (202) 720–3157, email: *USCODEX@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCGP is responsible for dealing with procedural and general matters referred to it by Codex, for proposing amendments to the Codex Procedural Manual, and for reviewing and endorsing procedural provisions and texts forwarded by Codex committees for inclusion in the Procedural Manual.

The Committee is hosted by France.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 27th session of the CCGP will be discussed during the public meeting:

- Matters Referred to the CCGP.
- Issues Surrounding Codex Standards Held at Step 8.
- Mechanism for Examining Economic Impact Statements.
- Review of the Risk Analysis Policies of Codex Committees.
- Definition of the Term ''Hazard''.
- Proposed Amendment to the Terms of Reference of the Committee.
- Development of Joint Codex-World Organization for Animal Health (OIE) Standards.
- Distribution of Codex Documents and Length and Content of Meeting Reports.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the March 28, 2012, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 27th session of the CCGP, Karen Stuck (see **ADDRESSES**). Written comments should state that they relate to activities of the 27th session of the CCGP.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status (Not all prohibited bases apply to all programs).

Persons with disabilities who require alternative means for communication of program information (Braille, large print, and audiotape) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC on February 6, 2012.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2012–3060 Filed 2–9–12; 8:45 am]

BILLING CODE 3410–DM–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, March 12–14, 2012 on the times and location listed below.

DATES: The schedule of events is as follows:

Monday, March 12, 2012

10:00–10:30 a.m. Budget Committee.
10:45–11:30 Ad Hoc Committee on Accessible Design in Education.
11:30–Noon Preview of revised Access Board Web site.
1:30–2:30 p.m. Strategic Planning.
2:45–3:45 Ad Hoc Committee on Frontier Issues.

Tuesday, March 13, 2012

9:30–10:30 a.m. Technical Programs Committee.
10:45–4:00 p.m. Ad Hoc Committee Meetings: Closed to Public.

Wednesday, March 14, 2012

1:30–3:00 p.m. Board Meeting.

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, March 14, 2012, the Access Board will consider the following agenda items:

- Approval of the draft January 11, 2012 meeting minutes (vote).
- Budget Committee Report.
- Technical Programs Committee Report.
- Planning and Evaluation Committee Report.
- Ad Hoc Committee Reports.
  - Ad Hoc Committee on Outdoor Developed Areas (vote).
  - Ad Hoc Committee on Shared Use Paths (vote).
- Executive Director's Report.
- Election of Officers (vote).
- Public Comment, Open Topics.

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meeting and committee meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/about/policies/fragrance.htm* for more information).

David M. Capozzi,

Executive Director.

[FR Doc. 2012–3063 Filed 2–9–12; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Commercial Operator's Annual Report (COAR).

OMB Control Number: 0648–0428.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 204.

Average Hours per Response: 8.

Burden Hours: 1,632.

Needs and Uses: This request is for extension of a currently approved information collection.

The Alaska Commercial Operator's Annual Report (COAR) collects harvest and production information broken out by specific criteria such as gear type, area, delivery and product type, and pounds and value. The COAR is due by April 1 of the year following any buying or processing activity.

Any person or company who received a Fisheries Business License from the Alaska Department of Revenue and an Intent to Operate Permit by Alaska Department of Fish and Game (ADF&G) is required to annually submit the COAR to State of Alaska, ADF&G, under Alaska Administrative Code (AAC), chapter 5 AAC 39.130. In addition, any person or company who receives an Exclusive Economic Zone (EEZ) only permit from ADF&G annually must submit a COAR to ADF&G. Any owner of a catcher/processor or mothership with a Federal permit operating in the EEZ off Alaska is required to annually submit a COAR to ADF&G under 50 CFR 679.5(p).

The COAR provides information on ex-vessel and first wholesale values for statewide fish and shellfish products. Containing information from shoreside processors, stationary floating processors, motherships, and catcher/processors, this data collection yields equivalent annual product value information for all respective processing sectors and provides a consistent time series according to which groundfish resources may be managed more efficiently.

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: February 7, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–3143 Filed 2–9–12; 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 Institute of Standards and Technology (NIST).

Title: NIST Generic Request for Customer Service-Related Data Collections.

OMB Control Number: 0693–0031.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved information collection).

Burden Hours: 15,000.

Number of Respondents: 90,000.

Average Hours per Response: Less than 2 minutes for a response card; 2 hours for focus group participation. The estimated response time is expected to be less than 30 minutes.

Needs and Uses: NIST conducts surveys, focus groups, and other customer satisfaction/service data collections to obtain accurate information regarding customer satisfaction with NIST products, services and information. The collected information is needed and will be used to determine the kind and the quality of products, services, and information our key customers want and expect, as well as their satisfaction with and awareness or existing products, services, and information. Before each proposed data collection is begun, it will be submitted to and approved by the Office of Management and Budget.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Jessica 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 OMB Desk Officer, Jasmeet Seehra, Fax number (202) 395–5167 or *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: February 6, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–3071 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[12/22/2011 through 02/06/2012]

Firm name	Address	Date accepted for investigation	Products
McCormick Armstrong Co, Inc	1501 E. Douglas Avenue, Wichita, KS 68211–1608.	1/19/2012	The firm specializes in the commercial printing of customized promotional products including calendars, catalogs, and mailers.
Tru-Wood Cabinets, Inc	41778 Highway 77 North, Ashland, AL 36251.	1/12/2012	The firm produces kitchen cabinets from raw lumber and plywood.
Graymills Corporation	3705 North Lincoln Avenue, Chicago, IL 60613.	2/2/2012	The firm manufactures industrial pumps and pumping systems, parts washers, ink pumps, and systems, and filtration systems.
Mercury Aircraft, Inc	17 Wheeler Avenue, Hammondsport, NY 14840.	2/6/2012	The firm manufactures metal products like metal enclosures, frames, assemblies, components, and food service equipment.
Wittek Golf Supply Company, Inc ..	3865 Commercial Avenue, Northbrook, IL 60062.	2/6/2012	The company manufactures golf-related devices such as ball pickers and dispensers. In addition, the firm distributes golf-related products such as golf balls, ball washers, course signage, club grips, and golf tees.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: February 6, 2012.

Miriam Kearse,

Eligibility Certifier.

[FR Doc. 2012–3121 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Low Enriched Uranium From France: Preliminary Results of Antidumping Duty Changed Circumstances Review

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

SUMMARY: In response to a request from an interested party, Eurodif S.A. and AREVA NP Inc. (collectively, AREVA), the Department of Commerce (Department) initiated a changed circumstances review (CCR) of the antidumping duty order of low enriched uranium (LEU) from France.[1] We preliminarily determine that it is appropriate to issue a one-time amendment to the scope of the order to extend by 18 months the deadline otherwise applicable to AREVA for the re-exportation of one entry of LEU. We invite interested parties to comment on these preliminary results. Parties who submit comments in these reviews are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

DATES: *Effective Date:* February 10, 2012.

FOR FURTHER INFORMATION CONTACT: Emily Halle or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0176 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2002, the Department published an order on LEU from France.[2] The order contains a provision to exclude from the scope LEU owned by a ''foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.''

On December 5, 2011, AREVA requested that the Department initiate and conduct an expedited changed circumstances review to amend the scope of the order to extend by 18 months the deadline for re-exporting an entry of LEU for which AREVA reported it would not be able to meet the deadline for re-exportation.[3] At the time of entry, the LEU at issue met the requirements for exclusion from the scope outlined above. On December 13, 2011, AREVA provided additional factual information supporting its request. On December 14, 2011, USEC Inc., and its subsidiary, United States Enrichment Corporation (collectively, USEC), responded to AREVA's request that it had no objection to the 18-month extension of time requested by AREVA for the re-exportation of the LEU entry discussed by AREVA.

In response to AREVA's request, the Department initiated a changed circumstances review of the antidumping duty order on LEU from France,[4] and requested that any parties wishing to provide factual information for the Department's consideration do so within 15 days of the publication of the initiation notice, *i.e.,* January 24, 2012. On January 23, USEC filed a letter in which it again expressed that it has no objection to the extension requested by AREVA.

Scope of the Order

The product covered by the order is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of the order. Specifically, the order does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of the order. For purposes of the order, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of the order.

Also excluded from the order is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this proceeding is dispositive.

Preliminary Results of Changed Circumstances Review

Based on the Department's analysis of the submissions on the record, in accordance with 19 CFR 351.216, we preliminarily determine to amend the scope of the order to extend by 18 months the deadline for re-exporting the LEU entry at issue. AREVA imported the entry of LEU at issue into the United States on November 1, 2010, for fabrication and subsequent re-exportation to the end-user, the Japanese customer. The entry met the conditions in the scope of the order for exclusion from the order. Both the importer and the end-user filed with U.S. Customs and Border Protection (CBP) the required certifications that the LEU was owned by a ''foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or

[1] *See Low Enriched Uranium from France: Initiation of Antidumping Duty Changed Circumstances Review,* 77 FR 1059 (January 9, 2012) (*CCR Initiation Notice*).

[2] *See Notice of Amended Final Determination and Notice of Countervailing Duty Order: Low Enriched Uranium From France,* 67 FR 6689 (February 13, 2002).

[3] *See* Letter from AREVA, ''Low Enriched Uranium from France,'' dated December 5, 2011.

[4] *See CCR Initiation Notice.*

fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States.'' The 18-month period for this entry expires May 1, 2012. AREVA's December 5, 2011, request explains that following the March 11, 2011, earthquake and tsunami that struck Japan, AREVA's Japanese end-use customer was required by the Japanese government to shut down its nuclear power facility pending necessary remediation of the situation. In light of the disaster that struck Japan after entry of this merchandise into the United States, AREVA's end-user is not able to take delivery of the LEU within the 18-month period, as required by the certifications that AREVA and the end-user filed at the time of entry.

AREVA provided documentation supporting this claim, including: (1) A letter from the Japanese Minister of Economy, Trade and Industry, dated May 6, 2011, regarding the shutdown by Chubu Electric Power Co., Inc. of the operation of one of its nuclear power plants until safety measures are completed and confirmed by the Nuclear and Industrial Safety Agency; (2) a letter from Chubu Electric Power Co., Inc., dated May 9, 2011, confirming that the board had decided to shut down the power plant requested; (3) a notice from Mitsubishi Nuclear Fuel discussing a timeline of the nuclear power plant shutdown and forecasts for its reopening; (4) entry summary and related entry documents for entry number W96–3576942–O; and, (5) importer and end-user certifications to U.S. Customs and Border Protection (CBP) (referenced in the certifications as ''U.S. Customs Service'').[5]

We find that the evidence provided by AREVA is sufficient to establish that the circumstances of its request are extraordinary, and beyond the control of AREVA and the Japanese end-user. Therefore, we preliminarily determine that it is appropriate, for this entry only, to amend the scope of the order and to extend the deadline for the re-exportation of this sole LEU entry from 18 months to 36 months. Should these preliminary results remain unchanged in the final results, we will extend the deadline for re-exportation of this entry to no later than November 1, 2013. AREVA and the end-user will be required to provide new certifications to CBP prior to the original deadline for re-exportation of this entry, *i.e.,* May 1, 2012.

Public Comment

Any interested party may request a hearing within 15 days of publication of this notice. Any hearing, if requested, will be held no later than 27 days after the date of publication of this notice, or the first workday thereafter. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. Case briefs from interested parties may be submitted not later than 15 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed no later than five days after the submission of case briefs. All written comments shall be submitted in accordance with 19 CFR 351.303. Parties are reminded that as of August 5, 2011, with certain, limited exceptions, all submissions for all proceedings must be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).[6] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time (ET) on the deadline.

The Department intends to issue the final results of this CCR no later than April 10, 2012. This date may be extended in accordance with 19 CFR 351.216(e). The final results will include the Department's analysis of issues raised in any written comments.

We are issuing and publishing these preliminary results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

Dated: February 3, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–3166 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* Letter from AREVA, ''Low Enriched Uranium from France,'' dated December 13, 2011.

[6] For additional information on IA ACCESS, please visit *https://iaaccess.trade.gov/help.aspx.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Final Results of the 2009 Countervailing Duty Administrative Review

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

SUMMARY: On August 8, 2011, the Department of Commerce (''Department'') published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2009, through December 31, 2009. Following the issuance of the preliminary results, Molino e Pastificio Tomasello S.p.A. (''Tomasello'') corrected its reported benefit amount for a subsidy program. We invited interested parties to comment on the preliminary results. Our analysis of Tomasello's correction led to a change in the net subsidy rate. The final net rates for Tomasello; Pastificio Antonio Pallante S.r.L. (''Pallante''); F.lli De Cecco di Filippo Fara San Martino S.p.A. (''De Cecco'') and Pastificio Fabianelli S.p.A. (''Fabianelli'') are listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* February 10, 2012.

FOR FURTHER INFORMATION CONTACT: Mahnaz Khan or Christopher Siepmann, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0914 and (202) 482–7958, respectively.

SUPPLEMENTARY INFORMATION:

Background

The following events have occurred since the publication of the preliminary results of this review. *See Certain Pasta From Italy: Preliminary Results of the 14th (2009) Countervailing Duty Administrative Review,* 76 FR 48130 (August 8, 2011) (''*Preliminary Results*''). We sent a supplemental questionnaire to Tomasello on August 12, 2011, and the Department received a response from Tomasello on September 8, 2011.

On September 29, 2011, we received a case brief from Tomasello. We did not receive rebuttal briefs.

Period of Review

The period of review for which we are measuring subsidies is January 1, 2009, through December 31, 2009.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from the order. *See* Memorandum from Eric B. Greynolds to Melissa G. Skinner, dated August 4, 2004, which is on file in the Department's Central Records Unit (''CRU'') in Room 7046 of the main Department building. In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Instituto per la Certificazione Etica e Ambientale are also excluded from the order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled ''Recognition of Instituto per la Certificazione Etica e Ambientale (ICEA) as a Public Authority for Certifying Organic Pasta from Italy'' which is on file in the Department's CRU. Pursuant to the Department's May 12, 2011 changed circumstances review, effective January 1, 2009, gluten-free pasta is also excluded from the scope of the countervailing duty order. *See Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part,* 76 FR 27634 (May 12, 2011).

The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

We have addressed all issues raised in Tomasello's case brief in the February 6, 2012 ''Issues and Decision Memorandum for the Final Results in the 14th Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (''Decision Memorandum''), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues raised by Tomasello, to which we have responded in the Decision Memorandum. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the information and comments received, we have revised the calculations with respect to the benefit amount calculated for Measure 3.14 for Tomasello. Further, we have determined that Measure 3.14, which was found regionally specific in the *Preliminary Results,* is instead specific on the basis of adverse facts available due to the Italian government's failure to provide *de facto* specificity information for this program. We have also determined that Tomasello did not receive any benefits under Regional Law 15/1993 during the POR, and have modified our net subsidy rate accordingly. These changes are discussed in detail in the Decision Memorandum.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (''the Act''), provide that the Department shall apply ''facts otherwise available'' if necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In the *Preliminary Results,* we found grants under Measure 3.14 to be specific within the meaning of section 771(5A)(D)(iv) of the Act upon preliminarily determining that Government of Italy limits benefits under this program to companies in certain regions. *See Preliminary Results,* 76 FR at 48135–36. Upon reevaluation of Measure 3.14 for these final results, we find that the Government of Italy failed to respond to our request for usage information regarding this program. We requested this information twice, in supplemental questionnaires dated May 12, 2011, and June 17, 2011. As explained above, in cases where there is not enough information on the record for us to determine whether a program is specific (*see* section 776(a)(1) of the Act), and in cases where an interested party fails to provide information that has been requested by the Department by the deadline for the submission of that information (*see* section 776(a)(2)(B) of the Act), we use facts otherwise available. Furthermore, an adverse inference is warranted under section 776(b) of the Act where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Because the Government of Italy failed to respond to our request for usage information regarding Measure 3.14, we find application of adverse facts available to be warranted. Therefore, we determine as adverse facts available that the assistance received by Tomasello under Measure 3.14 is specific. For a full discussion of this issue, *see* Decision Memorandum at ''Analysis of Programs'' and Comment 2.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated individual subsidy rates for the mandatory respondents, De Cecco, Fabianelli, Pallante, and Tomasello. For the period January 1, 2009, through December 31,

2009, we find that the *ad valorem* net subsidy rates for the producers/exporters under review are as follows:

Producer/Exporter	Net subsidy rate
F.lli De Cecco di Filippo Fara San Martino S.p.A.	0.39% (*de minimis*).
Pastificio Fabianelli S.p.A	0.00%.
Molino e Pastificio Tomasello S.p.A.	5.11%.
Pastificio Antonio Pallante, S.r.L.	1.00%.

Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') fifteen days after the date of publication of these final results. Because the net subsidy rates for De Cecco and Fabianelli are less than 0.5 percent and, thus, *de minimis,* the Department will instruct CBP to liquidate shipments of certain pasta by De Cecco and Fabianelli entered or withdrawn from warehouse, for consumption, from January 1, 2009, through December 31, 2009, without regard to countervailing duties, in accordance with 19 CFR 351.106(c). For Pallante and Tomasello, the Department will instruct CBP to assess countervailing duties at the net subsidy rate listed above.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A., and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l., which was revoked from the order), the Department has directed CBP to assess countervailing duties on all entries between January 1, 2009, and December 31, 2009, at the rates in effect at the time of entry.

Cash Deposit Instructions

Since the countervailable subsidy rate for De Cecco and Fabianelli is *de minimis* or zero, the Department will instruct CBP to continue to suspend liquidation of entries, but to collect no cash deposits of estimated countervailing duties for De Cecco and Fabianelli on all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For Tomasello and Pallante, the Department intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above.

For all non-reviewed firms (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l. which was revoked from the order), we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 6, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

Comment 1: Whether the Department impeded the proceeding

Comment 2: Whether the Department failed to differentiate between national government programs and regional government programs

Comment 3: Whether the Department should have countervailed the entire benefit from Law 46/1982, Article 14 (Fondo Innovazione Tecnologica)

Comment 4: Whether the Department should have found Article 280 of Law 296/2006 and Article 23 of Legislative Decree 38/2000 to be specific

[FR Doc. 2012–3180 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Addendum to Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice is to advise the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC) will be changed to include additional topics.

DATES: The teleconference meeting is scheduled for Friday, February 24, 2012, at 2:00 p.m. Eastern Standard Time (EST). Please register by 5:00 p.m. EST on Friday, February 17, 2012 to listen in on the teleconference meeting.

ADDRESSES: The meeting will take place via teleconference. For logistical reasons, all participants are required to register in advance by the date specified above. Please contact Mr. Todd DeLelle at the contact information below to register and obtain call-in information.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries, International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230. Phone: 202–482–4877; Fax: 202–482–5665; email: *todd.delelle@trade.gov.*

SUPPLEMENTARY INFORMATION: The meeting will take place from 2:00 p.m. to 3:00 p.m. This meeting is open to the public. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: The agenda for the February 24, 2012 ETTAC includes: 2:00 p.m.–3:00 p.m.: Presentation of, and deliberation on, a list of harmonized tariff schedule codes the ETTAC considers relevant to the U.S. environmental industry and recommendations regarding U.S. government approaches to environmental export promotion.

Background: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was originally chartered in May of 1994. It was most recently re-chartered until October 2012.

The teleconference will be accessible to people with disabilities. Please specify any requests for reasonable accommodation when registering to participate in the teleconference. Last minute requests will be accepted, but may be impossible to fill.

No time will be available for oral comments from members of the public during this meeting. As noted above, any member of the public may submit pertinent written comments concerning

the Committee's affairs at any time before or after the meeting. Comments may be submitted to Mr. Todd DeLelle at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. Eastern Standard Time on Friday, February 17, 2012, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2012–3183 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Applicants for the Appointment to the United States-India CEO Forum

AGENCY: Market Access and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In 2005, the Governments of the United States and India established the U.S.-India CEO Forum. This notice announces membership opportunities for appointment or reappointment as representatives to the U.S. Section of the Forum's private sector Committee.

DATES: Applications should be received no later than 45 days after publication of this Notice.

ADDRESSES: Please send requests for consideration to Linda Droker, Awinash Bawle, and Jed Diemond at the Office of South Asia, U.S. Department of Commerce, either by email at *linda.droker@trade.gov, awinash.bawle@trade.gov,* and *jed.diemond@trade.gov* or by mail to U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 2310, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Linda Droker, Director, Office of South Asia, U.S. Department of Commerce, telephone: (202) 482–2955.

SUPPLEMENTARY INFORMATION: The U.S.-India CEO Forum, consisting of both private and public sector members, brings together leaders of the respective business communities of the United States and India to discuss issues of mutual interest, particularly ways to strengthen the economic and commercial ties between the two countries, and to communicate their joint recommendations to the U.S. and Indian governments. The Forum will have U.S. and Indian co-chairs; the Deputy National Security Advisor for International Economic Affairs, together with the Deputy Chairman of the Planning Commission of India, co-chair the Forum. The Forum will include a Committee comprising private sector members. The Committee will be composed of two Sections, each consisting of 10–12 members from the private sector representing the views and interests of the private sector business community in the United States and India. Each government will appoint the members to its respective Section. The Committee will provide recommendations to the two governments and their senior officials that reflect private sector views, needs, and concerns about the creation of an environment in which their respective private sectors can partner, thrive, and enhance bilateral commercial ties to expand trade and economic links between the United States and India. The Committee will continue to build on the work done by the Committee to date, including the Forum's April 2008 and November 2010 reports.

Candidates are currently being sought for membership on the U.S. Section of the Forum. Each candidate must be the Chief Executive Officer or President (or have a comparable level of responsibility) of a U.S.-owned or controlled company that is incorporated in and has its main headquarters located in the United States and is currently doing business in both India and the United States. Each candidate also must be a U.S. citizen or otherwise legally authorized to work in the United States and be able to travel to India and locations in the United States to attend official Forum meetings as well as Section meetings on the U.S. side. In addition, the candidate may not be a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Evaluation of applications for membership in the U.S. Section by eligible individuals will be based on the following criteria:

- A demonstrated commitment by the individual's company to the Indian market either through exports or investment.
- A demonstrated strong interest in India and its economic development.
- The ability to offer a broad perspective and business experience to the discussions.
- The ability to address cross-cutting issues that affect the entire business community.
- The ability to initiate and be responsible for activities in which the Forum will be active.
- Prior work by the applicant on the U.S. Section of the Committee.

The evaluation of applications for membership in the U.S. Section will be undertaken by a committee of staff from multiple U.S. Government agencies. Members will be selected on the basis of who best will carry out the objectives of the Forum as stated in the last paragraph under Supplementary Information, above. The U.S. Section of the Committee should also include members who represent a diversity of business sectors and geographic locations. To the extent possible, Section members also should represent a cross-section of small, medium, and large firms.

U.S. Section members will receive no compensation for their participation in Forum-related activities. Individual members will be responsible for all travel and related expenses associated with their participation in the Forum, including attendance at Committee and Section meetings. It is anticipated that the next Forum meeting will be held in the first half of 2012 [in conjunction with senior level government exchanges]. The U.S. and Indian Sections should be prepared to work together ahead of that time to prepare recommendations to the U.S. and Indian governments. Only appointed members may participate in official Forum meetings; substitutes and alternates will not be designated. U.S. Section members will normally serve for two-year terms but may be reappointed. In the event of a vacancy after members of the U.S. Section are appointed, candidates not previously selected may be considered to fill the vacancy based on material submitted in response to this notice. To be considered for membership in the U.S. Section, please submit the following information as instructed in the **ADDRESSES** and **DATES** captions above: Name and title of the individual requesting consideration; name and address of company's headquarters; location of incorporation; size of the company; size of company's export trade, investment, and nature of operations or interest in India; and a brief statement of why the candidate should be considered, including information about the candidate's ability to initiate and be responsible for activities in which the Forum will be active. Candidates that have previously been members of the U.S. Section need only provide a letter expressing their interest in re-applying and indicating any changes to the application materials previously supplied. All candidates will

be notified of whether they have been selected.

Dated: February 3, 2012.

Linda S. Droker,

Director of the Office of South Asia.

[FR Doc. 2012–3158 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness Solicitation of Nominations for Membership

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an Opportunity for Representatives of Public or Semi-Public Organizations or Entities, Including Ports, To Apply for Membership on the Advisory Committee on Supply Chain Competitiveness.

SUMMARY: The Department of Commerce is currently seeking applications for public or semi-public organizations or entities, including ports, to serve as members of the Advisory Committee on Supply Chain Competitiveness (Committee). Representatives of ports are particularly encouraged to apply. The purpose of the Committee is to advise the Secretary on the necessary elements of a comprehensive, holistic national freight infrastructure and a national freight policy designed to support U.S. export growth and competitiveness, foster national economic competitiveness, and improve U.S. supply chain competitiveness in the domestic and global economy.

DATES: Nominations for membership must be received on or before February 24, 2012.

ADDRESSES: Richard Boll, Office of Service Industries, Room CC307, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; phone 202–482–1135; email: *richard.boll@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Service Industries, Room CC307, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; phone 202–482–1135; email: *richard.boll@trade.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of Commerce invites nominations to the Committee of representatives of ports for the charter term that began November 21, 2011, for appointments for a two-year term concurrent with the charter term. The Committee charter was recently amended to allow for representatives of public or semi-public organizations or entities, including ports, to serve as members of the Committee, and nominations of such representatives are being sought through this notice. Representatives of ports are particularly encouraged to apply.

All Committee members will be selected in accordance with applicable Department of Commerce guidelines, based upon their ability to advise the Secretary of Commerce on the necessary elements of a comprehensive, holistic national freight infrastructure and a national freight policy designed to support U.S. export growth and competiveness, foster national economic competitiveness, and improve U.S. supply chain competitiveness in the domestic and global economy. Members shall represent a balanced and broad range of interests, including representatives from supply chain firms or their associations (including shippers and all modes of freight transportation (trucking, rail, maritime, and air)), ports, stakeholders, community organizations, and others directly affected by the supply chain as well as experts from academia. ITA previously solicited nominations for representatives of other points of view and academia. See 76 FR 77778 (Dec. 14, 2011) for more information.

The membership should reflect the general composition of the U.S. supply chain industry.

Other than the experts from academia, all members shall serve in a representative capacity, expressing their views and interests of a U.S. entity or organization, as well as its particular sector. Members serving in such a representative capacity are not Special Government Employees. The members from academia serve as experts and therefore are Special Government Employees (SGEs) and shall be subject to the ethical standards applicable to SGEs.

Each member of the Committee must be a U.S. citizen, not a federally registered lobbyist, and not registered as a foreign agent under the Foreign Agents Registration Act. All appointments are made without regard to political affiliation. Self-nominations will be accepted.

Members of the Committee will not be compensated for their services or reimbursed for their travel expenses. The Committee shall meet as often as necessary as determined by the DFO, but not less than once per year.

Members shall serve at the pleasure of the Secretary from the date of appointment to the Committee to the date on which the Committee's charter terminates.

Nominations for membership on the Committee to represent public or semi-public organizations or entities, including ports, should provide the following information:

(1) Name, title, and relevant contact information (including phone, fax, and email address) of the individual requesting consideration;

(2) An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938;

(3) An affirmative statement that the applicant is not a federally registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as a Committee member if the applicant becomes a federally registered lobbyist;

(4) *A sponsor letter on the sponsoring* entity's letterhead containing a brief description why the nominee should be considered for membership;

(5) Short biography of nominee including credentials;

(6) Brief description of the entity to be represented and its activities and size (number of employees or members and annual sales, if applicable); and

(7) An affirmative statement that the applicant meets all Committee eligibility requirements for representative members, including that the applicant represents a U.S. company or U.S. organization.

a. For purposes of Committee eligibility, a U.S. company is at least 51 percent owned by U.S. persons.

b. For purposes of Committee eligibility, a U.S. organization is controlled by U.S. persons, as determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable.

Nominations may be emailed to: *richard.boll@trade.gov* or faxed to the attention of Richard Boll at 202–482–0316, or mailed to Richard Boll, Office of Service Industries, *Room CC118,* U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and must be received on or before February 24, 2012. Nominees selected for appointment to the Committee will be notified.

Dated: February 6, 2012.

David Long,

Director, Office of Service Industries.

[FR Doc. 2012–3168 Filed 2–9–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Annual Economic Survey of Federal Gulf and South Atlantic Shrimp Permit Holders

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 10, 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 and instructions should be directed to Christopher Liese, (305) 365–4109 or *Christopher.Liese@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

That National Oceanic and Atmospheric Administration (NOAA) annually collects socioeconomic data from commercial fishermen in the Gulf of Mexico and South Atlantic shrimp fisheries who hold one or more permits for shrimp fishing in federal waters (United States (U.S.) Exclusive Economic Zone (EEZ)). Information about revenues, variable and fixed costs, capital investment and other socioeconomic information is collected from a random sample of permit holders. This data complements other data already collected and is needed to conduct socioeconomic analyses in support of management of the shrimp fishery and to satisfy legal requirements. The data will be used to assess how fishermen will be impacted by and respond to federal regulation likely to be considered by fishery managers.

II. Method of Collection

The information will be collected on paper using a mail survey.

III. Data

OMB Control Number: 0648–0591.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations; and individuals or households.

Estimated Number of Respondents: 800.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 600.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

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: February 7, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–3144 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA907

Endangered and Threatened Species; Recovery Plans

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

ACTION: Extension of public comment period.

SUMMARY: On January 5, 2012, NMFS announced the release of the Draft Southern Oregon/Northern California Coast Recovery Plan (Draft Plan) for public review and comment. The Draft Plan addresses the Southern Oregon/Northern California Coast Coho Salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU). NMFS is soliciting review and comment from the public and all interested parties on the Draft Plan. As part of that proposal, we provided a 60-day comment period, ending on March 5, 2012. We have received requests for an extension of the public comment period. In response to these requests, we are extending the comment period for the proposed action an additional 60 days.

DATES: Information and comments on the subject action must be received by May 4, 2012.

ADDRESSES: Please send written comments to Julie Weeder, National Marine Fisheries Service, 1655 Heindon Road Arcata, CA 95521. Comments may also be submitted by email to: *SONCC.Recovery@noaa.gov.* Comments may be submitted via facsimile (fax) to (707) 825–4840. Please include the following on the cover page of the fax: ''Attn: Recovery Coordinator/SONCC Coho Salmon Public Draft Recovery Plan Comments.''

Persons wishing to review the Draft Plan can obtain an electronic copy (i.e., CD ROM) from Cynthia Anderson by calling (707) 825–5162 or by emailing a request to *cynthia.anderson@noaa.gov* with the subject line ''CD ROM Request for SONCC Coho Salmon Draft Recovery Plan.'' Electronic copies of the Draft Plan are also available on-line on the NMFS Web site *http://swr.nmfs.noaa.gov/recovery.*

FOR FURTHER INFORMATION CONTACT: Julie Weeder, Recovery Coordinator, at (707) 825–5168, email *julie.weeder@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2012, NMFS published a Notice of Availability of the Draft Recovery Plan for the Southern Oregon/Northern California Coast Evolutionarily Significant Unit (ESU) of Coho Salmon (Draft Plan) for public review and comment (77 FR 476). The Draft Plan addresses the Southern Oregon/Northern California Coast Coho Salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU). NMFS is soliciting review and comment from the public and all interested parties on the Draft Plan. As part of that proposal, we

provided a 60-day comment period, ending on March 5, 2012. Public meetings were held in Bayside, CA on January 31, Willits, CA on February 1, and Brookings, OR on February 2. Public meetings are planned for Medford, OR on February 15 and Yreka, CA on a date to be determined. The date will be posted on the NMFS Southwest Region Web site: *http://swr.nmfs.noaa.gov/recovery.*

NMFS received requests for an extension of the public comment period. In response to these requests, we are extending the comment period for the proposed action an additional 60 days. Information and comments must be received by May 4, 2012.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: February 7, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–3176 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA995

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will hold a meeting, via conference call, of its Coastal Pelagic Species Management Team (CPSMT) and Coastal Pelagic Species Advisory subpanel (CPSAS). The meeting is open to the public, via a public listening station at the Pacific Council offices.

DATES: The conference call will be held Tuesday, February 28, 2012, from 10:30 a.m. to 12 p.m. Pacific Time.

ADDRESSES: A listening station will be available at the Pacific Council offices. 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the joint conference call is to consider any CPS-related fisheries research proposals that will require an Exempted Fishing Permit (EFP) from NMFS. At its March meeting, the Pacific Council will consider adopting for public review any proposals that are submitted. The CPSMT and CPSAS will discuss any EFP proposals, and may develop statements to be included in the March Pacific Council meeting record. In addition, two terms of reference (TOR) documents, guiding methodology reviews and stock assessment reviews, will be considered. Those two documents are newly merged versions of existing TORs, intended to guide both groundfish and CPS review procedures. Both TORs will be considered at the March Pacific Council meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: February 7, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–3138 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA996

Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico and South Atlantic Fishery Management Councils will convene a meeting of the Ad Hoc Goliath Grouper Joint Council Steering Committee.

DATES: The meeting will convene at 9 a.m. to 4 p.m. EST on Wednesday, February 29, 2012.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Bortone, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Ad Hoc Goliath Grouper Joint Council Steering Meeting was formed via motions passed by both the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council ''* * * to explore approaches to move the Goliath Grouper beyond the moratorium and collect information to support an informative assessment that will determination of stock status and possible recovery.'' Items to be considered in the agenda are: an overview presentation of previous stock assessments, a discussion on what data will be needed, how these data should be collected, Terms of Reference (TOR) revision, establish a process for a workshop (charge to workshop; timeline), nominations for potential panelists for a workshop, expected products from workshop activities, and a discussion of future activities by the Steering Committee.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's *ftp site, ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Ad Hoc Goliath Grouper Joint Council Steering Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Ad Hoc Goliath Grouper Joint Council Steering Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Councils intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to

Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: February 7, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–3137 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA994

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a conference call of its Groundfish Essential Fish Habitat Review Committee (EFHRC).

DATES: The conference call will take place Tuesday, February 28, 2012. The meeting will begin at 2 p.m. and will conclude by 4 p.m. Pacific Time.

ADDRESSES: The meeting will be held via conference call, with a public listening station available at the Pacific Council offices.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purposes of the conference call are to discuss a draft request for proposals, and to continue planning for a report to the Pacific Council at its April 2012 meeting in Seattle, WA. Other topics may be discussed as time allows, at the discretion of the Chair.

Although non-emergency issues not contained in the meeting agenda may come before the EFHRC for discussion, those issues may not be the subject of formal EFHRC action during this meeting. EFHRC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EFHRC's intent to take final action to address the emergency.

Special Accommodations

This public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: February 7, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–3136 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA982

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council's Scientific and Statistical Committee (SSC) and the Advisory Panel (AP) will hold meetings.

DATES: The SSC will meet on March 14–15, 2012. The AP will meet on March 15, 2012, concurrently with the SSC during the morning session, and then will meet separately during the afternoon session to discuss the three presentations given during the morning session. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Embassy Suites Hotel, Tartak St., Carolina, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The SSC will meet to discuss the items contained in the following agenda:

March 14, 2012—9 a.m.

Call to order
Roll Call
Monitoring of ACLs

1. SSC Review of fishery monitoring programs *http://www.mragamericas.com/wp-content/uploads/2010/03/MRAG–EDF-Guiding-Principles-for-Monitoring-Programs-FINAL.pdf*
   a. How to apply this to ACL monitoring
   b. Timeliness (*e.g.* 60 days for data submission)
   c. Minimum data to be collected
   d. Commercial and recreational landings
   e. Guidance that can or should be used
   f. What is optimal
   g. Recommendations form the SSC on how to monitor ACLs
2. Establish Research Needs Sub-committee to address priority research needs for the next 5 years. Update on status of overfished species and issues affecting rebuilding of specific species/species units.
3. Deep Water Queen Conch Assessment

Joint Meeting SSC and AP

March 15, 2012—9 a.m.–12 noon

4. Review of SEDAR 26 Complete Assessment Reports for queen and silk snappers and red tail parrotfish (*http://www.sefsc.noaa.gov/sedar/Sedar_Workshops.jsp?WorkshopNum=26*)
5. Discussion of options paper on parrotfish size and trip limits
6. Data needs and recommendations on study design to determine status of parrotfish populations on St. Croix
7. Review information needs for SEDAR 30 (2012) including recommendations on how to gather information on species designated for assessment: blue tang, queen triggerfish

March 15, 2012–1 p.m.—5 p.m.–SSC meeting continues

Old business
New business
Next meeting
Adjourn

The AP will reconvene during the afternoon from 1 p.m. to 5 p.m. to discuss the three presentations given during the morning session.

The meetings are open to the public, and will be conducted in English. Simultaneous interpretation (English/Spanish) will be provided for the AP meeting. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other

auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: February 7, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–3142 Filed 2–9–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 3/12/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 11/28/2011 (76 FR 72908–72909) and 12/9/2011 (76 FR 76952–76953), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. Chapter 85 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. Chapter 85) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

Blade, Surgical Knife, Detachable, Carbon Steel, Disposable, Sterile

NSN: 6515–00–660–0011—No. 10.
NSN: 6515–00–660–0010—No. 11.
NSN: 6515–00–660–0009—No. 12.
NPA: The Lighthouse for the Blind, St. Louis, MO.
Contracting Activity: DEFENSE LOGISTICS AGENCY TROOP SUPPORT, Philadelphia, PA.
Coverage: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Service

Service Type/Location: Furnishing Management Service, McConnell AFB, KS.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.
Contracting Activity: DEPT OF THE AIR FORCE, FA4621 22 CONS LGC, MCCONNELL AFB, KS.

Patricia Briscoe,

Deputy Director, Business Operations, Pricing and Information Management.

[FR Doc. 2012–3128 Filed 2–9–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 3/12/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or To Submit Comments Contact: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 USC 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC Chapter 85) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

Portable USB 2.0 Hard Drives

NSN: 7045–01–568–9694—320G.
NSN: 7045–01–568–9695—500G.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: General Services Administration, New York, NY.
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Services

Service Type/Location: Custodial Services, McNary Lock and Dam, 82790 Devore Road, Umatilla, OR.
NPA: Portland Habilitation Center, Inc., Portland, OR.
Contracting Activity: Dept of the Army, XU W071 ENDIST, Walla Walla, WA.

Service Type/Location: Grounds Maintenance, VA Nebraska-Western Iowa Health Care System, Grand Island Division, 2201 North Broadwell Avenue, Grand Island, NE.
NPA: Goodwill Specialty Services, Inc., Omaha, NE.
Contracting Activity: Department of Veterans Affairs, Nebraska Western-Iowa Health Care System, Omaha, NE.

Patricia Briscoe,

Deputy Director, Business Operations, Pricing and Information Management.

[FR Doc. 2012–3129 Filed 2–9–12; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Public Availability of Commodity Futures Trading Commission FY 2011 Service Contract Inventory

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Public Availability of FY 2011 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Commodity Futures Trading Commission is publishing this notice to advise the public of the availability of the FY 2011 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP) and the revised guidance issued on 11/8/2011. OFPP's November 5, 2010 guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* Commodity Futures Trading Commission has posted its inventory and a summary of the inventory on the CFTC homepage at the following link: *http://www.cftc.gov/About/CFTCReports/index.htm.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Sonda R. Owens in the Office of Financial Management, Procurement at 202–418–5182 or *sowens@cftc.gov.*

Dated: February 7, 2012.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–3182 Filed 2–9–12; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, February 15, 2012, 10 a.m.–12 p.m.

PLACE: Room 410, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

1. *Decisional Matter:* ASTM F963–11.
2. *Briefing Matter:* FY 2012 Operating Plan.

TIME AND DATE: Wednesday, February 15, 2012; 2 p.m.–3 p.m.

PLACE: Room 410, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: February 7, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–3211 Filed 2–8–12; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to receive briefings on sexual harassment programs, health issues in combat zone deployments, leadership accountability in the prevention of sexual assault and harassment, and an update on the Women in Services Restrictions report. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Defense Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact listed at the address detailed in **FOR FURTHER INFORMATION CONTACT** no later than 5 p.m., Tuesday, February 28, 2012. If a written statement is not received by Tuesday, February 28, 2012, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement should be submitted. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on

Thursday, March 1, 2012 from 1:45 p.m. to 2:30 p.m. in front of the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

DATES: March 1, 2011, 8:30 a.m.–2:30 p.m.

ADDRESSES: 801 North Saint Asaph Street Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bowling or DACOWITS Staff at 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. Email: *Robert.bowling@osd.mil.* Telephone: (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

Thursday, March 1, 2012, 8:30 a.m.–2:30 p.m.

—Welcome, introductions, and announcements.
—Briefing—Sexual Harassment Prevention Programs.
—Briefing—Health Issues in Combat Zone Deployments.
—Briefing—Leadership Accountability in Prevention of Sexual Assault and Harassment.
—Briefing—Women in Service Restrictions Report.
—Public Comment Period.

Dated: February 7, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–3165 Filed 2–9–12; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Public Availability of Defense Nuclear Facilities Safety Board; FY 2010 Service Contract Inventory Analysis/FY 2011 Service Contract Inventory

AGENCY: Defense Nuclear Facilities Safety Board (DNFSB).

ACTION: Notice of Public Availability of FY 2010 Service Contract Inventory Analysis and FY 2011 Service Contract Inventory.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), DNFSB is publishing this notice to advise the public of the availability of (1) its analysis of the FY 2010 Service Contract inventory and (2) the FY 2011 Service Contract inventory.

Both the FY 2010 analysis and the FY 2011 inventory have been developed in accordance with guidance issued on December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf.*

The FY 2011 inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency.

DNFSB has posted its FY 2010 analysis and FY 2011 inventory and a summary of the inventory on the DNFSB homepage at the following link: *http://www.dnfsb.gov/open.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Mark Welch at 202–694–7043 or *Mailbox@dnfsb.gov.*

Dated: February 6, 2012.

Debra H. Richardson,

Deputy General Manager.

[FR Doc. 2012–3065 Filed 2–9–12; 8:45 am]

BILLING CODE 3670–01–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 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 April 10, 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 Felecia A. Briggs, HS–83/C–455 Germantown Building, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–1290 or by fax at 301–903–5492, by email at *felecia.briggs@hq.doe.gov,* or information about the collection instruments may be obtained at: *http://www.hss.doe.gov/pra.html.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to the person listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–1800; (2) Information Collection Request Title: Security; (3) Type of Review: renewal; (4) Purpose: The collections are used by DOE to exercise management oversight and control over its contractors that provide goods and services for DOE organizations and activities in accordance with the terms of their contracts and the applicable statutory, regulatory, and mission support requirements of the Department. Information collected is for (1) Foreign Ownership, Control or Influence data from bidders on DOE contracts requiring personnel security clearances; and (2) individuals in the process of applying for a security clearance/access authorization or who already holds one. The collections are: DOE F 5631.34, Data Report on Spouse/Cohabitant; Security Incident Notification Report and Report of Preliminary Security Incident/Infraction (DOE F 471.1 and DOE F 5639.3; DOE F 5631.20, Request for Visitor Access Approval; DOE Form 5631.18, Security Acknowledgement; DOE Form 5631.29, Security Termination Statement; DOE Form 5631.29, Security Termination Statement; DOE Form 5631.5, The Conduct of Personnel Security Interviews; Influence (e-FOCI) System as required by DOE Order 470.4B, Safeguards and Security Program, Section 2; and Foreign Access Central Tracking System (FACTS)); (5) Annual Estimated Number of Respondents: 81,669; (6) Annual Estimated Number of Total Responses: 81,669; (7) Annual Estimated Number of Burden Hours: 71,206; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: 0.

Statutory Authority: Section 641 of the Department of Energy Organization Act, codified at 42 U.S.C. 7251, and the following additional authorities:

DOE F 5631.34, Data Report on Spouse/Cohabitant: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 12968 (August 2, 1995); Executive Order 10865 (February 20, 1960); Executive Order 10450 (April 27, 1953); DOE O 472.2 (July 21, 2011).

Security Incident Notification Report and Report of Preliminary Security Incident/Infraction (DOE F 471.1 and DOE F 5639.3): Executive Order 13526 (December 29, 2009); 32 CFR part 2001; DOE O 470.4B (July 21, 2011).

DOE F 5631.20, Request for Visitor Access Approval: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165.

DOE Form 5631.18, Security Acknowledgement: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 13526 (December 29, 2009); Executive Order 10865 (Feb. 20, 1960); Executive Order 10450 (April 27, 1953); DOE O 5631.2C (February 17, 1994).

DOE Form 5631.29, Security Termination Statement: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 13526 (December 29, 2009); Executive Order 10865 (Feb. 20, 1960); Executive Order 10450 (Apr. 27, 1953); 32 CFR part 2001; DOE O 472.2 (July 21, 2011).

DOE Form 5631.5, The Conduct of Personnel Security Interviews: 10 CFR part 710; Executive Order 12968 (Aug. 2, 1995); Executive Order 10450 (April 27, 1953); DOE Order 472.2 (July 21, 2011).

Electronic Foreign Ownership, Control or Influence (e-FOCI) System: Executive Order 12829 (January 6, 1993); DOE O 470.4B (July 21, 2011).

Foreign Access Central Tracking System (FACTS): Presidential Decision Directive 61 (February 1999); DOE O 142.3A (October 14, 2010).

Issued in Washington, DC, on February 3, 2012.

Stephen A. Kirchhoff,

Director, Office of Resource Management, Office of Health, Safety and Security.

[FR Doc. 2012–3131 Filed 2–9–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–368–000.
Applicants: Dominion Cove Point LNG, LP.
Description: DCP—February 3, 2012 Administrative Changes to be effective 3/5/2012.
Filed Date: 2/3/12.
Accession Number: 20120203–5066.
Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: RP12–369–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Bayonne Lateral Project Compliance with Docket CP09–417–000 to be effective 3/1/2012.
Filed Date: 2/3/12.
Accession Number: 20120203–5070.
Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: RP12–370–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P's request for Temporary Waiver of Certain NAESB Standards and Commission Regulations.
Filed Date: 2/3/12.
Accession Number: 20120203–5205.
Comments Due: 5 p.m. ET 2/8/12.

Docket Numbers: CP12–53–000.
Applicants: Atmos Energy Corporation.
Description: Submits Application for a blanket certificate of public convenience and necessity.
Filed Date: 2/1/12.
Accession Number: 20120201–0201.
Comments Due: 5 p.m. ET 2/13/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–3099 Filed 2–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–363–000.
Applicants: Northern Natural Gas Company.
Description: 20120201 Annual PRA Fuel Rates to be effective 4/1/2012.
Filed Date: 2/1/12.
Accession Number: 20120201–5130.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–364–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 02/01/12 Negotiated Rates—United Energy Trading, LLC (HUB) to be effective 2/1/2012.
Filed Date: 2/1/12.
Accession Number: 20120201–5155.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–365–000.
Applicants: Great Lakes Gas Transmission Limited Par.
Description: Great Lakes Gas Transmission Limited Partnership Semi-Annual Transporter's Use Report.
Filed Date: 2/1/12.
Accession Number: 20120201–5158.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–366–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 02/01/12 Negotiated Rates—Tenaska (HUB) to be effective 2/1/2012.
Filed Date: 2/1/12.
Accession Number: 20120201–5161.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP12–367–000.
Applicants: El Paso Natural Gas Company.
Description: MDO/MHO Non-Critical Penalty Rate Charge Filing and Variance Activity Report to be effective 4/1/2012.
Filed Date: 2/1/12.
Accession Number: 20120201–5176.
Comments Due: 5 p.m. ET 2/13/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1435–007.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Compliance Filing Rate Case to be effective 2/1/2012 under RP11–1435 Filing Type: 580
Filed Date: 1/18/12.
Accession Number: 20120118–5130.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: RP11–1435–008.
Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Rate Case Implementation Filing Errata to be effective 2/1/2012.
Filed Date: 2/1/12.
Accession Number: 20120201–5177.
Comments Due: 5 p.m. ET 2/13/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–3100 Filed 2–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–975–000.
Applicants: Cleco Evangeline LLC.
Description: Change to Add Ancillary Services to be effective 1/10/2012.
Filed Date: 2/2/12.
Accession Number: 20120202–5002.
Comments Due: 5 p.m. ET 2/23/12.

Docket Numbers: ER12–980–000.
Applicants: AEP Generation Resources Inc.
Description: 20120202 Tariff Database Cover Sheet to be effective 2/2/2012.
Filed Date: 2/2/12.
Accession Number: 20120202–5105.
Comments Due: 5 p.m. ET 2/23/12.

Docket Numbers: ER12–981–000.
Applicants: Southwest Power Pool, Inc.
Description: 1628R3 Western Farmers Electric Cooperative NITSA NOAS to be effective 4/1/2012.
Filed Date: 2/2/12.
Accession Number: 20120202–5106.
Comments Due: 5 p.m. ET 2/23/12.

Docket Numbers: ER12–982–000.
Applicants: Central Hudson Gas & Electric Corporation.
Description: FERC Rate Schedule 202—2011 Update to be effective 1/30/2012.
Filed Date: 2/3/12.
Accession Number: 20120203–5000.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–983–000.
Applicants: Avista Corporation.
Description: Avista Corp FERC Rate Schedule 532 to be effective 2/3/2012.
Filed Date: 2/3/12.
Accession Number: 20120203–5001.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–985–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc.'s Notice of Cancellation.
Filed Date: 2/2/12.
Accession Number: 20120202–5122.
Comments Due: 5 p.m. ET 2/23/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–20–000.
Applicants: Southwest Power Pool, Inc.
Description: Application of Southwest Power Pool, Inc. under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Securities.
Filed Date: 2/2/12.
Accession Number: 20120202–5119.
Comments Due: 5 p.m. ET 2/23/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–3111 Filed 2–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–64–000.
Applicants: Franklin Resources, Inc.
Description: Request for Reauthorization and Extension of Blanket Authorizations under Section 203 of the Federal Power Act of Franklin Resources, Inc.
Filed Date: 2/3/12.
Accession Number: 20120203–5148.
Comments Due: 5 p.m. ET 2/24/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2715–004.
Applicants: Interstate Power and Light Company.
Description: Interstate Power and Light Company submits tariff filing per 35: IPL Amended and Restated O&T Agreement with ITCM & CIPCO to be effective 12/31/9998.
Filed Date: 2/3/12.
Accession Number: 20120203–5109.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–480–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Response to Letter Requesting Additional Information of Midwest Independent Transmission System Operator, Inc.
Filed Date: 2/3/12.
Accession Number: 20120203–5146.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–653–001.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.17(b): Addendum to Service Agreement 319; Interconnection Agreement ANPP & AVSE II to be effective 12/15/2011.
Filed Date: 2/3/12.
Accession Number: 20120203–5098.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–795–001.
Applicants: High Liner Foods Incorporated.
Description: High Liner Foods Incorporated submits tariff filing per: Amended Filing to be effective N/A.
Filed Date: 2/3/12.
Accession Number: 20120203–5144.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–986–000.
Applicants: ResCom Energy LLC.
Description: ResCom Energy LLC submits tariff filing per 35.1: Baseline Tariff Filing to be effective 2/3/2012.

Filed Date: 2/3/12.
Accession Number: 20120203–5071.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–987–000.
Applicants: PJM Interconnection, LLC, Virginia Electric and Power Company.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii: PJM Service Agreement No. 3191—WDSA among Dominion and Richmond Energy LLC to be effective 1/4/2012.
Filed Date: 2/3/12.
Accession Number: 20120203–5097.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–988–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits tariff filing per 35.13(a)(2)(iii: Desert Star Service Agreement to be effective 4/4/2012.
Filed Date: 2/3/12.
Accession Number: 20120203–5099.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–989–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2012–02–03 CAISO's LGIA with San Diego Gas & Electric Co. to be effective 4/4/2012.
Filed Date: 2/3/12.
Accession Number: 20120203–5105.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–990–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.15: Termination of Bountiful Parrish Sub Construction Agreement to be effective 4/10/2012.
Filed Date: 2/3/12.
Accession Number: 20120203–5110.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–991–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Rev to Att K and MR1 Reg Res for Reliability Treated in RSP Process to be effective 4/3/2012.
Filed Date: 2/3/12.
Accession Number: 20120203–5120.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–992–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2012–02–03 Att B—Marked Tariff MSG Enhancements.pdf to be effective 4/4/2012 under ER12–992. Filing Type: 10.
Filed Date: 2/3/12.
Accession Number: 20120203–5125.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–993–000.
Applicants: Robbins Energy, LLC.
Description: Robbins Energy, LLC submits tariff filing per 35.1: Baseline Tariff Filing to be effective 2/3/2012.
Filed Date: 2/3/12.
Accession Number: 20120203–5157.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–994–000.
Applicants: Parkview AMC Energy, LLC.
Description: Parkview AMC Energy, LLC submits tariff filing per 35.1: Baseline Tariff Filing to be effective 2/3/2012.
Filed Date: 2/3/12.
Accession Number: 20120203–5158.
Comments Due: 5 p.m. ET 2/24/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–3110 Filed 2–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2309–019]

Jersey Central Power and Light Company, PSEG Fossil, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license for the 364.5-megawatt (MW) Yards Creek Pumped Storage Hydroelectric Project located on Yards Creek, in the townships of Hardwick and Blairstown, Warren County, New Jersey and has prepared an environmental assessment (EA). In the EA, Commission staff analyzes the potential environmental effects of licensing the project and conclude that issuing a license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnline Support@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

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, contact FERC Online Support.

Comments on the EA should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1–A, Washington, DC 20426. Please affix ''Yards Creek Pumped Storage Hydroelectric Project No. 2309–019'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. Although the Commission strongly encourages electronic filings, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For further information contact Allyson Conner at (202) 502–6082.

Dated: February 6, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–3163 Filed 2–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14291–000]

Green Wave Mendocino Wave Park; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 23, 2011, Green Wave Energy Solutions, LLC, California, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Green Wave Mendocino Wave Park (Mendocino Wave Project or project) to be located in the Pacific Ocean off the coast of the City of Mendocino in Mendocino County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) 150 to 680 Wave Energy Converters (WEC) (Pelamis or OPT) units having a total installed capacity of 100 megawatts; (2) a proposed 2 to 3-mile-long, 36 kilovolt, 4-inch-diameter, three-phase AC submarine cable; and (3) appurtenant facilities. The project is estimated to have an average annual generation of 250 gigawatthours.

Applicant Contact: Mr. Wayne Burkamp, Green Wave Energy Solutions, LLC, 223 East Thousand Oaks Boulevard, Suite 307, Thousand Oaks, CA 91360; phone (888) 490–6444.

FERC Contact: Kenneth Hogan; phone: (202) 502–8434.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, 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–14291) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 6, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–3164 Filed 2–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14351–000]

Grand Coulee Project Hydroelectric Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On January 13, 2012, the Grand Coulee Project Hydroelectric Authority (GCPHA) filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the P.E. 46A Wasteway Hydroelectric Project, to be located on the P.E. 46A Wasteway, which is part of the Federal Columbia Basin Project, in Franklin County, Washington.

The proposed project would consist of the following new facilities: (1) A 20-foot-long, 20-foot-wide intake diversion canal leading to a 20-foot-wide, 15-foot-high intake gate structure; (2) an 8-foot-diameter, 750-foot-long steel penstock connecting the intake gate structure to the powerhouse; (3) a powerhouse containing a single Francis turbine/generating unit with an installed capacity of 1.6 megawatts; (4) an approximately 0.1-mile-long, 13.8-kilovolt transmission line; and (5) appurtenant facilities. The project would have an estimated average annual generation of 6,750 megawatts-hours.

Applicant Contact: Mr. Ronald K. Rodewald, Secretary-Manager, Grand Coulee Project Hydroelectric Authority, 32 C Street NW., P.O. Box 219, Ephrata, WA 98823, phone (509) 754–2227.

FERC Contact: Kelly Wolcott, (202) 502–6480.

Competing Application: This application competes with Project No. 14237–000 filed July 29, 2011. Competing applications had to be filed on or before January 17, 2012.

Deadline for filing comments, motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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–14351) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: February 6, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–3162 Filed 2–9–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2012–0104; FRL–9629–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; EPA ICR No. 2104.04

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44

U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 10, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2012–0104 by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Email: docket.superfund@epa.gov*.
- *Mail:* EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Environmental Protection Agency, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2012–0104. 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 (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to 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, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Rachel Lentz, Office of Brownfields and Land Revitalization, (5105T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–2745; fax number (202) 566–1476; email address: *Lentz.Rachel@epa.gov*.

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2012–0104, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–9744.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it 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, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are general purpose units of local government; land clearance authorities or other quasi-governmental entities that operate under the supervision and control of, or as an agent of, a general purpose unit of local government; government entities created by State legislature; regional councils or groups of general purpose units of local government; redevelopment agencies that are chartered or otherwise sanctioned by the State; States; Indian Tribes other than in Alaska; Alaska Native Regional Corporations, Alaska Native Village Corporations, and Metlakatla Indian Communities; and non-profit organizations.

Title: Brownfields Program—Accomplishment Reporting (Renewal).

ICR numbers: EPA ICR No. 2104.04, OMB Control No. 2050–0192.

ICR status: This ICR is currently scheduled to expire on July 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118) (''the Brownfields Amendments'') was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and authorizes EPA to award cooperative agreements to states, tribes, local governments, and other eligible entities to assess and clean up brownfields sites. Under the Brownfields Amendments, a brownfields site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. For funding purposes, EPA uses the term ''brownfields property(ies)'' synonymously with the term ''brownfields sites.'' The Brownfields Amendments authorize EPA to award several types of cooperative agreements to eligible entities on a competitive basis.

Under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act, States, tribes, local governments, and other eligible entities can receive assessment cooperative agreements to inventory, characterize, assess, and conduct planning and community involvement related to brownfields properties; cleanup cooperative agreements to carry out cleanup activities at brownfields properties; cooperative agreements to capitalize revolving loan funds and provide subgrants for cleanup activities; and job training cooperative agreements to support the creation and implementation of environmental job training and placement programs. Under subtitle C of the Small Business Liability Relief and Brownfields Revitalization Act, State and tribes can receive cooperative agreements to establish and enhance their response programs. The cooperative agreements support activities necessary to establish or enhance four elements of state and tribal response programs and to meet the public record requirements under the statute. The four elements eligible for funding include: (a) Timely survey and inventory of brownfield sites in the State or in the tribal land; (b) oversight and enforcement authorities or other mechanisms and resources; (c) mechanisms and resources to provide meaningful opportunities for public participation; and (d) mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete. States and tribes that receive funding under subtitle C must establish a public record system during the funding period unless an adequate public record system is already established.

Cooperative agreement recipients (recipients) have general reporting and record keeping requirements as a condition of their cooperative agreement that result in burden. A portion of this reporting and record keeping burden is authorized under 40 CFR Parts 30 and 31 and identified in the EPA's general grants ICR (OMB Control Number 2030–0020). EPA requires Brownfields program recipients to maintain and report additional information to EPA on the uses and accomplishments associated with the funded brownfields activities. EPA uses several forms to assist recipients in reporting the information and to ensure consistency of the information collected. EPA uses this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Redevelopment Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the program.

This ICR addresses the burden imposed on recipients that are associated with those reporting and recordkeeping requirements that are specific to cooperative agreements awarded under the Small Business Liability Relief and Brownfields Revitalization Act. This ICR renewal modifies the annual reporting and recordkeeping burden under the previous ICR. The modified burden reflects an increase in the number of respondents subject to the reporting and recordkeeping requirements, lower number of responses based on previous three years of data submissions, and improvements to the reporting forms based on EPA's experience. By using the same form to report information on recipient activities, EPA is adopting a streamlined approach that avoids potential confusion among recipients and allows the Agency to collect and report program information consistently across all brownfields cooperative agreements. EPA is also modifying the reporting form to simplify and clarify the reporting requirements, which will improve the accuracy of information reported and minimize the burden to recipients.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.25 hours per response for the Property Profile Form and 4 hours per response for the Job Training Reporting Form. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1007.

Frequency of response: Bi-annual for subtitle C recipients; quarterly for subtitle A recipients.

Estimated total average number of responses for each respondent: 20.

Estimated total annual burden hours: 3,167 hours.

Estimated total annual costs: $308,911. This includes an estimated burden cost of $308,911 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is a decrease of one hour in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's updating of burden estimates for this collection based on an, increase in number of experienced recipients familiar with reporting requirements, a lowered

number of responses based on previous data submission, and improvements in the ACRES reporting database.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 2, 2012.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization.

[FR Doc. 2012–3151 Filed 2–9–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9511–7]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1850.06; NESHAP for Primary Copper Smelters; 40 CFR part 63 subparts A and QQQ; was approved on 01/10/2012; OMB Number 2060–0476; expires on 01/31/2015; Approved without change.

EPA ICR Number 1807.05; NESHAP for Pesticide Active Ingredient Production; 40 CFR part 63 subparts A and MMM; was approved on 01/10/2012; OMB Number 2060–0370; expires on 01/31/2015; Approved without change.

EPA ICR Number 2025.05; NESHAP for Friction Materials Manufacturing; 40 CFR part 63 subparts A and QQQQQ; was approved on 01/10/2012; OMB Number 2060–0481; expires on 01/31/2015; Approved without change.

EPA ICR Number 1985.05; NESHAP for Leather Finishing Operations; 40 CFR part 63 subparts A and TTTT; was approved on 01/10/2012; OMB Number 2060–0478; expires on 01/31/2015; Approved without change.

EPA ICR Number 2066.05; NESHAP for Engine Test Cells/Stands; 40 CFR part 63 subparts A and PPPPP; was approved on 01/10/2012; OMB Number 2060–0483; expires on 01/31/2015; Approved without change.

EPA ICR Number 1805.06; NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills; 40 CFR part 63 subparts A and MM; was approved on 01/10/2012; OMB Number 2060–0377; expires on 01/31/2015; Approved without change.

EPA ICR Number 1506.12; NSPS for Municipal Waste Combustors; 40 CFR part 60 subparts A, Ea and Eb; was approved on 01/10/2012; OMB Number 2060–0210; expires on 01/31/2015; Approved without change.

EPA ICR Number 2408.02; Recordkeeping and Reporting Related to E15 (Final Rule); 40 CFR 80.1501(b)(5), 80.1502(a) and 80.1503; was approved on 01/10/2012; OMB Number 2060–0675; expires on 01/31/2015; Approved with change.

EPA ICR Number 0107.10; Source Compliance and State Action Reporting (Renewal); 40 CFR part 51 subpart Q; was approved on 01/11/2012; OMB Number 2060–0096; expires on 01/31/2015; Approved without change.

EPA ICR Number 0940.24; Ambient Air Quality Surveillance (Final Rule for CO NAAQS); 40 CFR part 58; was approved on 01/17/2012; OMB Number 2060–0084; expires on 12/31/2014; Approved without change.

EPA ICR Number 2289.02; National Volatile Organic Compound (VOC) Emission Standards for Aerosol Coatings; 40 CFR part 59 subpart E; was approved on 01/30/2012; OMB Number 2060–0617; expires on 01/31/2015; Approved without change.

EPA ICR Number 2376.05; Regulation to Establish Mandatory Reporting of Greenhouse Gases (Final Rule for Petroleum and Natural Gas, Subpart W); 40 CFR part 98 subpart W; was approved on 01/30/2012; OMB Number 2060–0651; expires on 12/31/2013; Approved without change.

EPA ICR Number 1488.08; Superfund Site Evaluation and Hazard Ranking System (Renewal); 40 CFR part 300, Appendix A; and 40 CFR 300.425; was approved on 01/30/2012; OMB Number 2050–0095; expires on 01/31/2015; Approved without change.

EPA ICR Number 1425.08; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA section 123 (Renewal); 40 CFR 310.2–310.9; 40 CFR 310.5; 40 CFR 310.10–310.12; and 40 CFR 310 Appendix II; was approved on 01/30/2012; OMB Number 2050–0077; expires on 01/31/2015; Approved without change.

EPA ICR Number 0982.10; NSPS for Metallic Mineral Processing Plants; 40 CFR part 60 subparts A and LL; was approved on 01/30/2012; OMB Number 2060–0016; expires on 01/31/2015; Approved without change.

EPA ICR Number 1057.12; NSPS for Sulfuric Acid Plants; 40 CFR part 60 subparts A and H; was approved on 01/30/2012; OMB Number 2060–0041; expires on 01/31/2015; Approved without change.

EPA ICR Number 1974.06; NESHAP for Cellulose Products Manufacturing; 40 CFR part 63 subparts A and UUUU; was approved on 01/30/2012; OMB Number 2060–0488; expires on 01/31/2015; Approved without change.

EPA ICR Number 0664.10; NSPS for Bulk Gasoline Terminals; 40 CFR part 60 subparts A and XX; was approved on 01/30/2012; OMB Number 2060–0006; expires on 01/31/2015; Approved without change.

EPA ICR Number 1716.08; NESHAP for Wood Furniture Manufacturing Operations; 40 CFR part 63 subparts Aand JJ; was approved on 01/30/2012; OMB Number 2060–0324; expires on 01/31/2015; Approved without change.

EPA ICR Number 1884.06; Final Rule Addendum to Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports (Chemical Data Reporting); 40 CFR parts 710 and 711; was approved on 01/31/2012; OMB Number 2070–0162; expires on 01/31/2015; Approved with change.

Comment Filed

EPA ICR Number 2438.01; NSPS for Onshore Natural Gas Processing Plants; in 40 CFR part 60 subparts KKK and LLL; OMB filed comment on 01/10/2012.

EPA ICR Number 2437.01; Standards of Performance for New Stationary Sources Oil and Natural Gas Production and Natural Gas Transmission and Distribution; in 40 CFR part 60 subparts A and OOOO; OMB filed comment on 01/10/2012.

EPA ICR Number 2445.01; NSPS for Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced After September 30, 2011; in 40 CFR part 60 subparts A and Ga; OMB filed comment on 01/10/2012.

EPA ICR Number 1160.10; NSPS/NESHAP for Wool Fiberglas Insulation Manufacturing Plants; in 40 CFR part 60 subparts A, NNN and PPP; OMB filed comment on 01/10/2012.

EPA ICR Number 2448.01; NESHAP for Ferroalloys; in 40 CFR part 63 subparts A and XXX; OMB filed comment on 01/27/2012.

EPA ICR Number 1799.06; NESHAP for Mineral Wool Production; in 40 CFR part 63 subparts A and DDD; OMB filed comment on 01/27/2012.

EPA ICR Number 0783.61; Certification and In-use Testing of Motor Vehicles: Revisions to Reduce Light-Duty Vehicle Emissions of Greenhouse Gases: Model Years 2017–2025 (Proposed Rule); in 40 CFR part 85 and 86; 40 CFR 85.1901–1908; 40 CFR part 86.1845–86.1848; 40 CFR part 600; OMB filed comment on 01/29/2012.

EPA ICR Number 1360.11; Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures (Proposed Rule); in 40 CFR parts 280 and 281; OMB filed comment on 01/30/2012.

Short Term Approvals

EPA ICR Number 2298.02: NESHAP for Nine Metal Fabrication and Finishing Source Categories (40 CFR part 63 subpart XXXXXX) was granted a short term approval to 04/30/2012 on 01/27/2012.

EPA ICR Number 2152.04: Clean Air Interstate Rule to Reduce Interstate Transport of Fine Particle Matter and Ozone was granted a short term approval to 05/31/2012 on 01/18/2012.

EPA ICR Number 1139.08: TSCA Section 4 Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Data Submission was granted a short term approval to 04/30/2012 on 01/31/2012.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2012–3125 Filed 2–9–12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0752; FRL–9511–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request: State Program Adequacy Determination: Municipal Solid Waste Landfills (MSWLFs) and Non-Municipal, Non-Hazardous Waste Disposal Units That Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 12, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2011–0752 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Office of Resource Conservation and Recovery (mail code 5306P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–9037; fax number: 703–308–8686; email address: *dufficy.craig@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 21, 2011 (76 FR 58496), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2011–0752, which is available for online viewing at *www.regulations.gov,* or in person at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the RCRA Docket is 202–566–0270.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: State Program Adequacy Determination: Municipal Solid Waste Landfills (MSWLFs) and Non-Municipal, Non-Hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste (Renewal).

ICR numbers: EPA ICR No. 1608.06, OMB Control No. 2050–0152.

ICR Status: This ICR is scheduled to expire on February 29, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB

control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 4010(c) of the Resource Conservation and Recovery Act (RCRA) of 1976 requires that EPA revise the landfill criteria promulgated under paragraph (1) of Section 4004(a) and Section 1008(a)(3). Section 4005(c) of RCRA, as amended by the Hazardous Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that MSWLFs and non-municipal, non-hazardous waste disposal units that receive household hazardous waste or CESQG hazardous waste are in compliance with the revised criteria for the design and operation of non-municipal, non-hazardous waste disposal units under 40 CFR part 257, Subpart B and MSWLFs under 40 CFR part 258 (40 CFR part 257, subpart B and 40 CFR part 258 are henceforth referred to as the ''revised federal criteria.''). Section 4005(c) of RCRA further mandates the EPA Administrator to determine the adequacy of state permit programs to ensure owner and/or operator compliance with the revised federal criteria. A state program that is deemed adequate to ensure compliance may afford flexibility to owners or operators in the approaches they use to meet federal requirements, significantly reducing the burden associated with compliance.

In response to the statutory requirement in § 4005(c), EPA developed 40 CFR part 239, commonly referred to as the State Implementation Rule (SIR). The SIR describes the state application and EPA review procedures and defines the elements of an adequate state permit program. The collection of information from the state during the permit program adequacy determination process allows EPA to evaluate whether a program for which approval is requested is appropriate in structure and authority to ensure owner or operator compliance with the revised federal criteria.

The EPA Administrator has delegated the authority to make determinations of adequacy, as contained in the statute, to the EPA Regional Administrator. The appropriate EPA Regional Office, therefore, will use the information provided by each state to determine whether the state's permit program satisfies the statutory test reflected in the requirements of 40 CFR part 239. In all cases, the information will be analyzed to determine the adequacy of the state's permit program for ensuring compliance with the federal revised criteria.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 242 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information; disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, Local, or Tribal Governments.

Estimated Number of Respondents: 12.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 968.

Estimated Total Annual Cost: $53,835, which includes $53,835 for annual labor and $0 for annualized capital or O&M costs. All costs are labor costs, there are no capital/start-up or O&M costs associated with this ICR.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–3147 Filed 2–9–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9629–8]

Notice of Approval of Clean Air Act Outer Continental Shelf Permits Issued to Shell Gulf of Mexico, Inc., and Shell Offshore, Inc. for the Discoverer Drillship

AGENCY: United States Environmental Protection Agency (EPA) Region 10.

ACTION: Notice of Final Action.

SUMMARY: This notice announces that EPA Region 10 has issued two final permit decisions granting Clean Air Act Outer Continental Shelf (OCS) permit applications, one from Shell Gulf of Mexico, Inc., for operation of the Discoverer drillship in the Chukchi Sea and one from Shell Offshore, Inc. (collectively, ''Shell''), for operation of the Discoverer drillship in the Beaufort Sea.

DATES: EPA Region 10 issued final permit decisions on the OCS permits for Shell's operation of the Discoverer drillship in the Chukchi and Beaufort Seas on January 27, 2012. The permits also became effective on that date. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of these final permit decisions, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of February 10, 2012.

ADDRESSES: The documents relevant to the above-referenced permits are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, AWT–107, Seattle, WA 98101. To arrange for viewing of these documents, call Natasha Greaves at (206) 553–7079.

FOR FURTHER INFORMATION CONTACT: Natasha Greaves, Office of Air Waste and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, Suite 900, AWT–107, Seattle, WA 98101. Anyone who wishes to review the EPA Environmental Appeals Board (EAB) decision described below can obtain it at *http://www.epa.gov/eab/.*

Notice of Final Action and Supplementary Information: EPA Region 10 issued two final permit decisions to Shell authorizing operation of the Discoverer drillship in the Chukchi and Beaufort Seas, OCS Permit Nos. R10OCS/PSD–AK–09–01 and R10OCS/PSD–AK–2010–01 (collectively, the ''Shell Discoverer permits''). The Shell Discoverer permits were initially issued by EPA Region 10 on September 19, 2011. The EPA's Environmental Appeals Board (EAB) received four petitions for review of the Shell Discoverer permits from the following entities: (1) The Inupiat Community of the Arctic Slope (ICAS); [1] (2) The Native Village of Point Hope, Resisting Environmental Destruction of Indigenous Lands, Alaska Wilderness League, Center for Biological Diversity, Natural Resources Defense Council, Northern Alaska Environmental Center, Ocean Conservancy, Oceana, Pacific Environment, Sierra Club, and the

[1] The Alaska Eskimo Whaling Commission initially joined in the ICAS petition, but later requested to withdraw from the appeal proceeding. The EAB granted its request.

Wilderness Society; (3) Mr. Daniel Lum; and (4) Ms. Donna Arvelo. On January 12, 2012, the EAB dismissed Ms. Arvelo's petition as untimely and denied review of the three other petitions. *See In re Shell Gulf of Mexico, Inc. and Shell Offshore, Inc.,* OCS Appeal Nos. 11–02, 11–03, 11–04 & 11–08 (EAB, Jan. 12, 2011) (Order Denying Review). Following the EAB's action, pursuant to 40 CFR 124.19(f)(1), EPA Region 10 issued final permit decisions on January 27, 2011. All conditions of the Shell Discoverer permits, as initially issued by Region 10 on September 19, 2011, are final and effective.

Dated: January 31, 2012.

Richard G. Albright,

Director, Region 10 Office of Air, Waste & Toxics.

[FR Doc. 2012–3160 Filed 2–9–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9001–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 01/30/2012 Through 02/03/2012

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20120027, Final EIS, FERC, CA, Eagle Mountain Pumped Storage Hydroelectric Project, Licensing Application for Eagle Mountain Mine, near the Town of Desert Center, Riverside County, CA, Review Period Ends: 03/12/2012, Contact: Kenneth Hogan 202–502–8434.

EIS No. 20120028, Draft EIS, USACE, CA, Clearwater Program, To Meet the Wastewater Management Needs of the Joint Outfall System (JOS) Through the Year 2050, near San Pedro, Section 404 Permit, Los Angeles County, CA, Comment Period Ends: 03/26/2012, Contact: Dr. Aaron O. Allen 805–585–2148.

EIS No. 20120029, Final EIS, FHWA, NC, Mid-Currituck Bridge Study, Transportation Improvements in the Currituck Sound Area, US–158 and NC 12, USACE Section 404 Permit, Currituck and Dare Counties, NC, Review Period Ends: 03/12/2012, Contact: John Sullivan 919–856–4346.

EIS No. 20120030, Final EIS, FHWA, AL, Helena Bypass Construction, from Shelby County Road 52 in Helena to State Route 261 near Bearden Road, Funding, USACE Section 404 Permit, Shelby County, AL, Review Period Ends: 03/12/2012, Contact: Mark D. Bartlett 334–274–6350.

Dated: February 7, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–3154 Filed 2–9–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9630–1; EPA–HQ–ORD–2012–0093]

Notice of Workshop and Call for Information on Integrated Science Assessment for Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; call for information.

SUMMARY: The U.S. EPA Office of Research and Development's National Center for Environmental Assessment (NCEA) is preparing an Integrated Science Assessment (ISA) as part of the review of the primary National Ambient Air Quality Standards (NAAQS) for oxides of nitrogen (NO_X). The scientific review that informs the ISA will include evidence for NO_X whereas the indicator for NO_X that has been used for the standard is nitrogen dioxide (NO_2). Thus, the ISA is referred to as the NO_X ISA while the standard itself is referred to as the NO_2 NAAQS. This ISA is intended to update the scientific assessment presented in the *Integrated Science Assessment for Oxides of Nitrogen—Health Criteria* (EPA 600/R–08/071), published in July 2008. Interested parties are invited to assist the EPA in developing and refining the scientific information base for the review of the NO_2 NAAQS by submitting research studies that have been published, accepted for publication, or presented at a public scientific meeting.

The EPA is also announcing that a workshop entitled ''*Kickoff Workshop to Inform EPA's Review of the Primary* NO_2 *NAAQS''* is being organized by NCEA and the EPA Office of Air and Radiation's Office of Air Quality Planning and Standards (OAQPS). The workshop will be held February 29 to March 1, 2012, in Research Triangle Park, North Carolina. The workshop will be open to attendance by interested public observers on a first-come, first-served basis up to the limits of available space.

DATES: The workshop will be held on February 29 to March 1, 2012. All communications and information submitted in response to the call for information should be received by EPA by March 9, 2012.

ADDRESSES: The workshop will be held at U.S. EPA, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina. An EPA contractor, ICF International, is providing logistical support for the workshop. To register, please send an email to: *EPA_NAAQS_Workshop@icfi.com* with ''NOx Kickoff Workshop'' in the subject line. The pre-registration deadline is February 17, 2012. Please direct questions regarding workshop registration or logistics to Courtney Skuce at (919) 293–1660, or the email address provided above. For specific questions regarding technical aspects of the workshop see the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Information in response to the call for information may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For details on the period for submission of research information from the public, contact the Office of Research and Development (ORD) Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or email: *ORD.Docket@epa.gov.* For technical information, contact Tom Luben, Ph.D., NCEA, telephone: (919) 541–5762; facsimile: (919) 541–2985; or email: *luben.tom@epa.gov* or Scott Jenkins, Ph.D., OAQPS, telephone: (919) 541–1167 or email: *jenkins.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project

Section 108(a) of the Clean Air Act directs the Administrator to issue ''air quality criteria'' for certain air pollutants. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare, which may be expected from the presence of such pollutant in the ambient air * * *.'' Under section 109 of the Act, EPA is then to establish NAAQS for each

pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

NO_2 is one of six ''criteria'' pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an ISA. The ISA, along with additional technical and policy assessments conducted by OAQPS, form the scientific and technical basis for EPA decisions on the adequacy of existing NAAQS and the appropriateness of new or revised standards.

At the start of a NAAQS review, EPA issues an announcement of the review and notes the initiation of the development of the ISA. At that time, EPA also issues a request that the public submit scientific literature that they want to bring to the attention of the Agency for consideration in the review process. The Clean Air Scientific Advisory Committee (CASAC), an independent scientific advisory committee mandated by the Clean Air Act, is charged with independent expert scientific review of EPA's draft ISAs. As the process proceeds, the public will have opportunities to review and comment on draft NO_X ISAs. These opportunities will also be announced in the **Federal Register**.

For the review of the NO_2 NAAQS being initiated by this notice, the Agency is interested in obtaining additional new information, particularly concerning toxicological studies of effects of controlled exposure to NO_2 on laboratory animals, humans, and in vitro systems, as well as, epidemiologic (observational) studies of health effects associated with ambient exposures of human populations to NO_2. EPA also seeks recent information in other areas of NO_2 research such as chemistry and physics, sources and emissions, analytical methodology, transport and transformation in the environment, and ambient concentrations. This and other selected literature relevant to a review of the NAAQS for NO_2 will be assessed in the forthcoming NO_X ISA.

As part of this review of the NO_2 NAAQS, EPA intends to sponsor a workshop on February 29 to March 1, 2012, to highlight significant new and emerging NO_X research, and to make recommendations to the Agency regarding the design and scope of the review for the primary (health-based) NO_2 standards to ensure that it addresses key policy-relevant issues and considers the new science that is relevant to informing our understanding of these issues. In addition, other opportunities for submission of new peer-reviewed, published (or in-press) papers will be possible as part of public comment on the draft ISAs that will be reviewed by CASAC. We intend that workshop discussions will build upon three prior publications or events (please see *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_index.html* to obtain a copy of these and other related documents): (1) *Primary National Ambient Air Quality Standards for Nitrogen Dioxide; Final Rule* (*40 CFR Parts 50 and 58,* February 9, 2010). The preamble to the final rule included detailed discussions of policy-relevant issues central to the last review; (2) *Integrated Science Assessment for Oxides of Nitrogen—Health Criteria* (EPA 600/R–08/071, July 2008); and (3) Risk and Exposure Assessment to Support the Review of the NO_2 *Primary National Ambient Air Quality Standard* (EPA 452/R–08/008a, November 2008).

Based in large part on the input received during this workshop, EPA will develop a draft integrated NO_2 NAAQS review plan that will outline the schedule, process, and approaches for evaluating the relevant scientific information and addressing the key policy-relevant issues to be considered in this review. The CASAC will be asked to conduct a consultation with the Agency on the draft integrated review plan, and the public will have the opportunity to comment on it as well. The final integrated review plan will be used to frame each of the major elements of the NO_2 review under the NAAQS review process: an integrated science assessment document, a risk/exposure assessment report, and a policy assessment.

II. How to Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2012–0093 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Research and Development (ORD) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The ORD Docket is located in the EPA Headquarters Docket Center, Room 3334, EPA West Building, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2012–0093. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to 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, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available,

e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: February 6, 2012.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012–3161 Filed 2–9–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2011–0080]

Privacy Act of 1974: New System of Records

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of new System of Records for EIB 11–08 Application for Global Credit Express Revolving Line of Credit.

SUMMARY: Ex-Im Bank proposes to add a new application form subject to the Privacy Act of 1974 (5 U.S.C. 522a), as amended. This action is necessary to meet the requirements of the Privacy Act which is to publish in the **Federal Register** a notice of the existence and character of records maintained by the agency (5 U.S.C. 522s(e)(4)). The attached file contains the System of Records Notice (SORN) for EIB 11–08 Application for Global Credit Express Revolving Line of Credit. The application form will be operational in the next 60 days.

DATES: This action will be effective without further notice on April 10, 2012 unless comments are received that would result in a contrary determination.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Jim Newton, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571

SUPPLEMENTARY INFORMATION: The Application for Global Credit Express Revolving Line of Credit will be used to determine the eligibility of the applicant and the transaction for Ex-Im Bank assistance under its Working Capital Guarantee and Direct Loan Program. Ex-Im Bank customers will be able to submit this form on paper only.

To underwrite this application, the Ex-Im Bank requires a Fair Issac Corporation (FICO) score. Some of the customers applying for this financing program are very small businesses and FICO uses the Social Security Number of the Borrower to acquire the consumer score.

Sharon A. Whitt,

Agency Clearance Officer.

System of Records Notice—EIB 11–08 Application for Global Credit Express Revolving Line of Credit

System Identifier:

EXIM/FORM–1.

SYSTEM NAME:

EIB 11–08 Application for Global Credit Express Revolving Line of Credit Federal Register Notice Date of Publication.

SECURITY CLASSIFICATION:

EIB 11–08 is an application that will be used to determine the eligibility to participate in Export-Import Bank's Working Capital Guarantee and Direct Loan Program. The application will be received in paper format only and is unclassified.

SYSTEM LOCATION:

All paper applications will be stored at Export-Import Bank of the United States, 811 Vermont Avenue NW., Washington, DC 20571.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

The Global Credit Express Revolving Line of Credit application will be used by U.S. small businesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information contained on this application contains data required for Export-Import Bank to determine the eligibility of the application and the transaction for assistance under the Working Capital Guarantee and Direct Loan Program. This includes Company Name, address, telephone number, Web site, Tax ID Number, Dun & Bradstreet Number, Contact Person, Contact Person Title, phone number, email address, number of full-time employees, Gross Sales Last Fiscal Year, North American Industrial Classification System (NAICS) codes, declaration of minority ownership, Borrower's name, Title, Social Security Number, Address, Company, Dun & Bradstreet Number, Tax ID Number, Number of years exporting, number of foreign accounts, Payment terms provided to foreign buyers, Total Export credit sales for last 3 years, Export Credit Accounts Receivable Outstanding, Total Export Credit loses for last 3 years, Five Largest Export Sales Markets, Description of principal line of business and products, description of how this loan will benefit your export related business, Calculation maximum loan amount and U.S. content of exports goods or services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Export-Import Bank requests the information in this application under the authority of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635 *et seq.*).

PURPOSE:

EIB 11–08 Application for Global Credit Express Revolving Line of Credit is used by an exporter in order to obtain approval for an Export-Import Bank direct loan or a guaranteed working capital line of credit to finance export sales. The information received provides Export-Import Bank staff with the information necessary to make a determination of the eligibility of the applicant and its creditworthiness for Export-Import Bank assistance under this direct loan and guarantee program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records maintained in the system will be used:

a. To disclose information for audits and oversight purposes performed by Export-Import Bank employees;

b. To provide information to a Congressional Office from the record of an individual in response to an inquiry from that Office;

c. For investigations;

d. By Export-Import Bank employees to collect information from third parties including credit reporting agencies and to collect credit scores;

e. For Monthly, Quarterly, Semi-annual, and Annual reporting;

f. To disclose information to Export-Import Bank contractors in support of Export-Import Bank authorized activities;

g. For litigation;

h. By National Archives and Records Administration for record management inspections in its role as Archivist;

i. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or other ___, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Export-Import Bank may report their credit experience with applicable credit bureaus such as: Dun & Bradstreet, FICO, and TransUnion.

STORAGE:

The paper application will be sorted in a locked filing cabinet or room.

RETRIEVABILITY:

Information is retrieved by transaction number, individual's name, SSN, and company name, Fair Issac Corporation (FICO) Reference Number, Small Business Scoring Service Reference (SBSS) number, Fair Issac Corporation (FICO) Score, Small Business Scoring Service (SBSS) Score, or Export-Import Bank's Exporter Score.

SAFEGUARDS:

This information is collected in paper format only and will be stored in a locked filing cabinet or room. Individual Export-Import Bank Staff access to this information will be controlled and monitored by the Export-Import Bank's Small Business Finance Division.

RETENTION AND DISPOSAL:

Records contained in the paper application are covered under the Export-Import Bank's record schedule, N1–275–02–01–1a approved by National Archives and Records Administration September 27, 2002.

SYSTEM MANAGER AND ADDRESS:

James Newton, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to: James Newton, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

And provide the following information:

1. Name.
2. Social Security Number.
3. Type of information requested.
4. Address to which the information should be sent.
5. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to make an amendment of records about them should write to: James Newton, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

And provide the following information:

1. Name.
2. Social Security Number.
3. Type of information requested.
4. Signature.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest records about them should write to: James Newton, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

And provide the following information:

1. Name.
2. Social Security Number.
3. Signature.
4. Precise identification of the information to be amended.

RECORD SOURCE CATEGORIES:

The record information contained on this application was received from the individual/company requesting financial assistance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–3120 Filed 2–9–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 12–25; DA 12–121]

Mobility Fund Phase I Auction Scheduled for September 27, 2012; Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission's Wireless Telecommunications and Wireline Competition Bureaus announce a reverse auction to award $300 million in one-time Mobility Fund Phase I support scheduled to commence on September 27, 2012. This document also seeks comment on competitive bidding procedures for Auction 901 and other program requirements.

DATES: Comments are due on or before February 24, 2012. Reply comments are due on or before March 9, 2012.

ADDRESSES: All filings in response to the notice must refer to AU Docket No. 12–25. The Wireless Telecommunications and Wireline Competition Bureaus strongly encourage interested parties to file comments electronically, and request that an additional copy of all comments and reply comments be submitted electronically to the following address: *auction901@fcc.gov.* Comments may be submitted by any of the following methods:

- *Electronic Filers:* Federal Communications Commission's Web Site: *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. 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, Attn: WTB/ASAD, 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. Eastern Time. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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 reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For Mobility Fund Phase I questions: Sayuri Rajapakse at (202) 418–0660; for auction process questions: Lisa Stover at (717) 338–2868. *Wireline Competition Bureau, Telecommunications Access Policy Division:* for general universal service questions: Alex Minard at (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the *Mobility Fund Phase I Auction Comment Public Notice* (Public Notice) released on February 2, 2012. The *Public Notice* and related Commission documents may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI

at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 12–121. The *Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/901/or* by using the search function for AU Docket No. 12–25 on the Commission's Electronic Comment Filing System (ECFS) web page at *http://www.fcc.gov/cgb/ecfs/.*

I. Introduction and Summary

1. Auction 901 will be the first auction to award high-cost universal service support through reverse competitive bidding, as envisioned by the Commission in the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011 and 76 FR 81562, December 28, 2011. Auction 901 will award one-time support to carriers that commit to provide 3G or better mobile voice and broadband services in areas where such services are unavailable, based on the bids that will maximize the road miles covered by new mobile services without exceeding the budget of $300 million. Because the objective of this auction is to maximize the expansion of advanced services with the available funds, winning bids will generally be those that would achieve the deployment of such services for relatively lower levels of support.

2. Many of the pre-auction processes and bidding procedures for this auction will be similar to those regularly used for the Commission's spectrum license auctions. The Bureaus will announce final procedures and other important information such as application deadlines and other dates related to Auction 901 after considering comments provided in response to the *Public Notice,* pursuant to governing statutes and Commission rules. In the *Public Notice,* the Bureaus propose and seek comment on detailed procedures for: (1) Identifying geographic areas eligible for support; (2) Determining the basic auction design, including the round format, how eligible areas may be aggregated for bidding, and how awardees will be selected; and (3) Establishing certain other bidding procedures, including information disclosure and methodologies for calculating auction and performance default payments.

3. In addition, the *Public Notice* seeks comment on two auction-related programmatic issues. Specifically, in connection with the Bureaus' discussion of approaches to aggregation of eligible areas for bidding, they seek comment on establishing more stringent coverage requirements, as compared to the minimum required by the rules, which would apply if the Bureaus implement procedures for bidder-defined aggregation of eligible geographic areas. The Bureaus also seek comment on developing a target rate for evaluating whether recipients meet the terms of the required certification that their rates for supported services in rural, insular, and high-cost areas are reasonably comparable to those offered in urban areas.

II. Background

4. In the *USF/ICC Transformation Order,* the Commission comprehensively reformed and modernized the universal service system to help ensure the universal availability of fixed and mobile communication networks capable of providing voice and broadband services where people live, work, and travel. The Commission's universal service reforms include a commitment to fiscal responsibility, accountability, and the use of market-based mechanisms, such as competitive bidding, to provide more targeted and efficient support than in the past. For the first time, the Commission established a universal service support mechanism dedicated exclusively to mobile services—the Mobility Fund.

5. The terms 3G, 3G or better, current generation, and advanced are used interchangeably in this document to refer to mobile wireless services that provide voice telephony service on networks that also provide services such as Internet access and email. This document refers throughout to awarding or selecting awardees by auction for simplicity of expression. Each party that becomes a winning bidder in the auction must file an application for support. Only after review of the application to confirm compliance with all the applicable requirements will a winning bidder become authorized to receive support.

6. Phase I of the Mobility Fund will provide up to $300 million in one-time support to address gaps in mobile services by supporting the build-out of current- and next-generation mobile networks in areas where these networks are unavailable. This support will be awarded by reverse auction with the objective of maximizing the coverage of road miles in eligible unserved areas within the established budget. We refer to areas without 3G or better services and the road miles within them as unserved. Those unserved areas and road miles eligible for Mobility Fund Phase I will be determined as described in this summary. The support offered under Phase I of the Mobility Fund is in addition to any ongoing support provided under existing high-cost universal service program mechanisms. Phase II of the Mobility Fund will provide $500 million annually for ongoing support of mobile services. Up to $100 million of this amount annually is designated for support to Tribal lands.

7. The *USF/ICC Transformation Order* established application, performance, and other requirements. In order to participate in Auction 901 and receive Mobility Fund Phase I support, an applicant must demonstrate for the areas on which it wishes to bid that it has been designated as an eligible telecommunications carrier (ETC), and has access to the spectrum necessary to satisfy the applicable performance requirements. Because of the lead time necessary to receive designation as an ETC and to acquire spectrum, prospective applicants that need to do so are strongly encouraged to initiate both processes as soon as possible in order to increase the likelihood that they will be able to participate in Auction 901. The Bureaus expect to release shortly a public notice summarizing existing requirements for filing an ETC application with the Commission. A Tribal entity may participate provided it has applied for designation as an ETC for the relevant area and that application is still pending. Any such entity must still receive designation prior to support being awarded. The requirement that parties have access to spectrum applies equally to all parties, including Tribal entities. In addition, an applicant must demonstrate that it is financially and technically capable of providing 3G or better service. To ensure that Mobility Fund Phase I support meets the Commission's public interest objectives, recipients will be subject to a variety of obligations, including performance, coverage, collocation, voice and data roaming requirements, and Tribal engagement obligations. Among other things, winning bidders will be required either to deploy services meeting the Commission's specified minimum requirements for 3G service within two years or 4G service within three years after the date on which it is authorized to receive support. Those seeking to participate in the auction must file a short-form application by a deadline to be announced, providing information and certifications as to their qualifications to receive support. After the close of the auction, winning bidders must submit a detailed long-form application and procure an irrevocable stand-by Letter (or Letters)

of Credit (LOC) to secure the Commission's financial commitment.

8. In the *USF/ICC Transformation Order,* the Commission delegated authority to the Bureaus to implement Mobility Fund Phase I, including the authority to prepare for and conduct an auction and administer program details. The *Public Notice* focuses on establishing the procedures and processes needed to conduct Auction 901 and administer Phase I of the Mobility Fund. Parties responding to the *Public Notice* should be familiar with the details of the *USF/ICC Transformation Order* and the established process for spectrum license auctions, which serve as the foundation for the process the Bureaus propose. After reviewing the comments requested by the *Public Notice,* the Bureaus will release a public notice detailing final procedures for Auction 901. That public notice will be released so that potential applicants will have adequate time to familiarize themselves with the specific procedures that will govern the conduct of the auction as well as with the obligations of support, including rates and coverage requirements that are addressed herein. The Bureaus ask that commenters, in advocating for particular procedures from among the options the Bureaus present for Auction 901, provide input on the costs and benefits of those procedures.

9. *Areas Eligible for Mobility Fund Support.* To assure that support is being used in areas that are not covered by current or next generation mobile networks, the *USF/ICC Transformation Order* provides that the Bureaus will identify areas presently without such services on a census block basis, and publish a list of census blocks deemed eligible for Phase I support. A preliminary list of potentially eligible census blocks, which include unserved census blocks with road miles, as well as the number of road miles associated with each can be found at: *http://wireless.fcc.gov/auctions/901/.* The Bureaus will release a revised list that will seek comment on various issues regarding the census blocks identified as potentially eligible. The Bureaus will finalize which areas are eligible for support in a public notice establishing final procedures for Auction 901.

10. *Auction Design and Bidding Procedures.* In the *USF/ICC Transformation Order,* the Commission concluded that distributing support through a reverse auction would be the best way to achieve its goal of maximizing consumer benefits with the funds available for Phase I of the Mobility Fund and adopted general competitive bidding rules for that purpose. Parties seeking support will compete in Auction 901 by indicating the amount of support they need to meet the requirements of Mobility Fund Phase I in the eligible census blocks on which they bid. The Commission indicated that a single-round sealed bid auction format would be most appropriate for Mobility Fund Phase I. Accordingly, the Bureaus propose that support will be awarded using a single-round auction format. Support will be awarded to maximize the number of road miles in eligible census blocks that can gain 3G or better mobile services under the Mobility Fund Phase I budget. This will generally result in providing support to no more than one provider in a given area. Unlike the Bureaus spectrum license auctions which involve license-by-license competition for a fixed inventory of licenses, this auction will award support only for the set of areas that will achieve the most newly covered road miles without exceeding the Mobility Fund Phase I budget based on the bids submitted. Thus, bidders will compete not only against other carriers that may be bidding for support in the same areas, but against carriers bidding for support in other areas nationwide. Successful bidders will be awarded support for an area at the price they bid.

11. The preliminary list of potentially eligible areas the Bureaus release in connection with the *Public Notice* contains approximately 491,000 census blocks, which are, on average, far smaller than the minimum areas for which carriers seeking support are likely to want to extend service. Thus, carriers bidding for support are likely to bid on groups of census blocks. To address this need to aggregate census blocks for bidding while maintaining a manageable auction process, the Bureaus discuss their proposed bidder-defined aggregation approach and seek comment on an alternative approach using predefined aggregations. The Bureaus propose a single round of bidding in any case, but most other aspects of the auction alternatives the Bureaus discuss—including how awardees are selected and what coverage obligations apply—are specific to the approach discussed.

12. Because the Bureaus expect the limited budget will constrain bid amounts, the Bureaus do not propose to establish any maximum acceptable bid amounts, reserve amounts, or maximum opening bids. In addition, consistent with recent spectrum license auction practice, the Bureaus propose to withhold, until after the close of bidding, information from applicants' short-forms regarding their interests in particular eligible census blocks. The Bureaus seek comment on these proposals.

13. *Post-Auction Procedures.* At the conclusion of the auction, winning bidders will be required to file an in-depth long-form application to demonstrate that they qualify for Mobility Fund Phase I support. The long-form application must include information regarding the winning bidder's ownership, eligibility to receive support, and network construction details. A winning bidder will be liable for an auction default payment if the bidder fails to timely file the long-form application, is found ineligible, is disqualified, or otherwise defaults for any reason. In addition, a winning bidder that fails to meet certain obligations will be liable for a performance default payment. Accordingly, winning bidders will be required to provide an irrevocable stand-by LOC in an amount equal to the amount of support, plus an additional amount which would serve as a performance default payment if necessary. The Bureaus seek comment on how to establish auction and performance default payments.

14. *Rates.* Applicants for Mobility Fund Phase I support must certify that they offer supported services at rates comparable to those for similar services in urban areas. In the *Public Notice,* the Bureaus describe and seek comment on a standard for demonstrating compliance with this requirement.

III. Areas Eligible for Mobility Fund Support

A. Identifying Eligible Unserved Census Blocks

15. In the *USF/ICC Transformation Order,* the Commission decided to target Mobility Fund Phase I support to census blocks without 3G or better service, and determined that American Roamer data is the best available data source for determining the availability of such service. Auction 901 will offer Mobility Fund Phase I support in eligible unserved census blocks, *i.e.,* those census blocks from the 2010 Census with road miles in particular road categories and where, based on the American Roamer data most recently available for this purpose, there is no coverage by 3G or better services at the centroid. The Bureaus use the term ''centroid'' to refer to the internal point latitude/longitude of a census block polygon. For the 2010 Census, the Census Bureau has tabulated data for each of the more than 11 million census blocks covering the 50 states, Washington, DC, Puerto Rico, American

Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The Bureaus conclude that, for Auction 901, they will use the most recently available American Roamer data, from January 2012. The Bureaus have not concluded their analysis of the January 2012 American Roamer data, but expect to do so shortly after release of the *Public Notice.* In preparation for the release of the *Public Notice,* however, the Bureaus have completed an analysis of the October 2011 American Roamer data using the same methodology that the Bureaus will use with the January 2012 American Roamer data, and are releasing a preliminary list of potentially eligible census blocks based on that earlier data. Once the Bureaus have completed their analysis of the January 2012 data, they will release a revised list of potentially eligible census blocks.

16. As the first step in the Bureaus' methodology they identified unserved blocks based on the 2010 Census blocks and October 2011 American Roamer data. The Bureaus used geographic information system (GIS) software to determine whether the American Roamer data shows 3G or better wireless coverage at the centroid of each block. Specifically, the Bureaus used ArcGIS software from Esri to determine whether the American Roamer data showed 3G or better coverage at each block's centroid. The following technologies were considered 3G or better: EV–DO, EV–DO Rev A, UMTS/HSPA, HSPA+, WiMAX, and LTE. If the American Roamer data did not show such coverage, the block was determined to be unserved. Because Mobility Fund Phase I support will be awarded based on bid amounts and the number of road miles in each unserved census block, the preliminary list of potentially eligible census blocks does not include any unserved census blocks without road miles. The preliminary list includes unserved census blocks with road miles in any of the road categories in the TIGER data made available by the Census Bureau. For Auction 901, the Bureaus will limit the final list of unserved census blocks eligible for support to only those that contain road miles in any of the chosen road categories.

17. Pursuant to the *USF/ICC Transformation Order,* the Bureaus will also make ineligible for support census blocks for which, notwithstanding the absence of 3G service, any provider has made a regulatory commitment to provide 3G or better wireless service, or has received a funding commitment from a federal executive department or agency in response to the carrier's commitment to provide 3G or better wireless service. Such federal funding commitments may have been made under, but are not limited to, the Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP) authorized by the American Recovery and Reinvestment Act of 2009 (ARRA). Furthermore, the Commission established certain bidder-specific restrictions. Specifically, each applicant for Mobility Fund Phase I support is required to certify that it will not seek support for any areas in which it has made a public commitment to deploy, by December 31, 2012, 3G or better wireless service. In determining whether an applicant has made such a public commitment, the Bureaus anticipate that they would consider any public statement made with some specificity as to both geographic area and time period. This restriction will not prevent a bidder from seeking and receiving support for an unserved area for which another provider has made such a public commitment.

18. Attachment A released with the *Public Notice* provides a summary of the preliminary list of potentially eligible census blocks determined based on October 2011 American Roamer data. For each state and territory, Attachment A provides the total number of potentially eligible census blocks (unserved census blocks with road miles), the total number of block groups with such blocks, the total number of tracts with such blocks, the total number of counties with such blocks, and the number of cellular market areas (CMAs) with such blocks. For each state and territory, Attachment A also provides the total population and area of the potentially eligible blocks, and the total number of road miles in each of the road mile categories. Due to the large number of potentially eligible blocks, the complete list will be provided in electronic format only, available as separate Attachment A files at *http://wireless.fcc.gov/auctions/901/.* For each potentially eligible block, individually identified by its Federal Information Processing Series (FIPS) code, these files provide the population and area of the block; the associated state, county, tract, and block group; any associated Tribe and Tribal land; and the number of road miles in each road mile category. The U.S. Census Bureau has not yet released 2010 Census block-level population data for American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands. Consequently, the population of the unserved blocks in these territories is not provided in the Attachment A files.

19. The Bureaus will release a revised list of potentially eligible census blocks, *i.e.,* revised Attachment A files, as well as a revised Attachment A. If commenters think certain blocks included in the revised list should not be eligible for support, they should indicate which blocks and provide supporting evidence. Similarly, if commenters think certain blocks not included in the revised list should be eligible for support, they should indicate which blocks and provide supporting evidence. In particular, the Bureaus note that, in the *USF/ICC Transformation Order,* the Commission required all wireless competitive ETCs in the high cost program to review the list of eligible census blocks for the purpose of identifying any areas for which they have made a regulatory commitment to provide 3G or better service or received a federal executive department or agency funding commitment in exchange for their commitment to provide 3G or better service. The Bureaus will entertain challenges to the revised list of potentially eligible census blocks only in the form of comments to the *Public Notice.*

20. Based on a review of the comments and any related information, the Bureaus will provide a final list of the specific census blocks eligible for support in Auction 901 when they release the public notice announcing procedures for Auction 901. In addition to providing files containing this final list of census blocks and related data, the Bureaus anticipate providing an interactive mapping interface for this information on the Commission Web site. The Bureaus seek comment on the type of information and interface that would be most helpful to bidders, in light of the tools carriers use or can develop for their business and deployment planning.

B. Establishing Unserved Road Mile Units

21. In Auction 901, the Bureaus will use road miles as the basis for calculating the number of units in each eligible census block for purposes of comparing bids and measuring the performance of Mobility Fund Phase I support recipients. To establish the road miles associated with each census block eligible for Mobility Fund Phase I support, as suggested by the Commission in the *USF/ICC Transformation Order,* the Bureaus will use the TIGER road miles data made available by the Census Bureau. The 2010 Census TIGER/Line® Shapefiles

may be found at *http://www.census.gov/geo/www/tiger/tgrshp2010/tgrshp2010.html.* Attachment B of the *Public Notice* provides nine categories of roads in the TIGER data, their descriptions, and the total number of miles of each category in the potentially eligible unserved census blocks on the preliminary list released with the *Public Notice.* The information on TIGER road categories is from Appendix F—MAF/TIGER Feature Class Code (MTFCC) Definitions, pages F–186 and F–187 at *http://www.census.gov/geo/www/tiger/tgrshp2010/documentation.html.* The preliminary Attachment A files at *http://wireless.fcc.gov/auctions/901/include,* for each potentially eligible census block, the number of road miles for each of the categories. The Bureaus will release a revised Attachment B at the time it releases a revised Attachment A and revised Attachment A files.

22. For the Bureaus' calculation of the number of road miles associated with each unserved census block, they include the linear road miles summed within the block plus half of the sum of any linear road miles that form a border with an adjacent block. The Bureaus include half of the sum of the border roads so these linear miles are not double counted and are appropriately attributed to each unserved block. Regarding which roads to include, the Bureaus propose to use the following TIGER road categories: S1100, primary roads; S1200, secondary roads; and S1400, local and rural roads and city streets. Providing support for these classes of roads will include 84 percent of all roads captured in the nine TIGER road categories and moreover, will target support to those areas that tend to be most regularly traveled, and thus, where the benefits of new advanced services will be most widely enjoyed. The Bureaus seek comment on these proposals. If commenters propose to use different road categories, they should explain their reasoning and describe the costs and benefits of the position they advocate.

23. The Bureaus propose to include as eligible census blocks only those unserved census blocks in which there are road miles in any of the road categories the Bureaus use for calculating unserved units. The Bureaus note that many of the unserved census blocks only have road miles in some of the road categories. Thus, if the Bureaus use the road categories proposed eligible census blocks will include unserved census blocks with road miles in the road categories S1100, S1200, and S1400. Support could only be awarded for such eligible census blocks and not for unserved census blocks that have no road miles or have road miles only in categories other than those the Bureaus use for calculating unserved units. The Bureaus seek comment on these proposals.

IV. Establishing Auction Procedures

24. The Bureaus seek comment on establishing specific auction procedures that will govern the conduct of Auction 901.

A. Auction Design

i. Single-Round Reverse Auction Design

25. The Bureaus propose to select awardees for Mobility Fund Phase I support in Auction 901 using a single-round reverse auction.

26. The Bureaus propose a single-round format because it is simple and quick, and because they believe multiple bidding rounds are unnecessary in this auction for bidders to make informed bid decisions or submit competitive bids. The purpose of the Mobility Fund Phase I auction mechanism is to identify whether and, if so, at what price, providers are willing to extend advanced wireless coverage over unserved areas in exchange for a one-time support payment. These bid decisions largely depend upon internal cost structures, private assessments of risk, and other factors related to the providers' specific circumstances. The bid amounts of other auction participants are unlikely to contain information that will significantly affect an individual bidder's own cost assessments and bid decisions. Thus, the Bureaus propose a single-round format because they anticipate that bidders do not need to know or have the opportunity to react to the bids of others as would be possible in a multiple-round format. The Bureaus seek comment on this proposed auction format.

27. The Bureaus discuss and seek comment on their proposal for facilitating bids on aggregations of eligible census blocks in a single-round format and on an alternative aggregation approach. The Bureaus also ask for input on a third possibility. The Bureaus also discuss auction design options related to each of these approaches, including package bidding and awardee determination. The Bureaus also seek comment on applying a specific coverage requirement under its proposed bidder-defined aggregation approach more stringent than the minimum coverage requirement applicable under the alternative aggregation approach. The Bureaus ask for input on these approaches and options, and request that commenters include as support for their positions explanations of how their suggestions will promote the Commission's objective in Mobility Fund Phase I of maximizing, within the $300 million budget, the number of road miles with newly available 3G or better service.

ii. Census Blocks and Aggregations

28. The Commission determined that the census block should be the minimum geographic building block for which support is provided, but left to the Bureaus the task of deciding how to facilitate bidding on aggregations of eligible census blocks. Some aggregation of census blocks will be necessary, since the blocks eligible for support under the program are on average far smaller than the average area covered by a single cell tower, which is likely to be the minimum incremental geographic area of expanded coverage with Mobility Fund Phase I support. As released with the *Public Notice,* the preliminary list of census blocks that may be eligible for support under Mobility Fund Phase I contains approximately 491,000 census blocks, and the average area of these blocks is approximately 1.8 square miles. The Bureaus propose bidding procedures that will allow bidders to create their own aggregations of census blocks, within certain limits. The Bureaus also seek comment on predefining a basic bidding unit larger than a block—and for this purpose suggest using census tracts.

29. With each approach the Bureaus describe related auction design and programmatic implications and options. In particular, pursuant to the *USF/ICC Transformation Order,* a recipient of Mobility Fund Phase I support will be obligated to provide voice and broadband service meeting the established minimum standards over at least 75 percent of the aggregate road miles associated with the census blocks covered by any individual bid, but the Commission delegated to the Bureaus whether to require a higher coverage threshold such as 95 or 100 percent if the Bureaus establish auction procedures that allow bidders to create their own aggregations of individual census blocks. The required minimum standards for service will depend on whether a winning bidder elects to deploy 3G or 4G service. Accordingly, in connection with the Bureaus proposed aggregation approach, they seek comment on applying a higher coverage requirement of 95 or 100 percent.

30. The Bureaus lay out their preferred approach—bidder-defined aggregations—and the alternatives, including predefined aggregations, in

some detail so that commenters can weigh the advantages and disadvantages of each approach. The Bureaus seek to establish bidding procedures that provide the best way to achieve the Commission's objective—to maximize the number of additional road miles where advanced wireless service is available without exceeding its budget of $300 million. The Bureaus invite specific comment on whether their proposed approach will allow bidders to bid on areas that fit well with their business plans and effectively promote the Commission's objective of expanding advanced wireless coverage. Bidders would not, under either approach described in this document be precluded from serving an area if they do not win support for the area. If commenters prefer an alternative, the Bureaus ask them to describe in detail why the alternative would better achieve the Commission's objectives for the Mobility Fund Phase I.

a. Bidder-Defined Aggregations

31. The bidder-defined aggregation approach would permit bidders to create their own aggregations of the eligible census blocks and submit all-or-nothing package bids on those aggregations. Under the bidder-defined aggregation approach, the Bureaus would give bidders considerable flexibility to aggregate the specific census blocks they propose to serve with Mobility Fund Phase I support. The Bureaus' intent is to provide bidders an opportunity to closely configure their bids to the geographic coverage of the specific cell sites that they would upgrade or build out to provide advanced wireless service with support. Such areas vary across regions and from provider to provider and are not likely to be known in advance by the Commission. A bidder could specify a set of census blocks to be covered and a total amount of support needed to cover the road miles in the eligible census blocks included in the bid. Under this approach a bid could cover an area as small as one census block or an area as large as a Cellular Market Area (CMA). CMAs are the areas in which the Commission initially granted licenses for cellular service. Cellular markets comprise Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs). There are a total of 734 CMAs covering the United States and the Territories. If a bidder submitted multiple bids that partially overlapped—that is, if some of the same eligible census blocks were included in more than one bid—only one of the overlapping bids could be awarded to the bidder. Aside from this restriction, which would give a bidder a means of submitting mutually exclusive bids to avoid winning support for more areas than it wishes, a bidder could win any or all of its package bids.

32. The auction would determine winning bids so as to maximize the number of road miles in eligible census blocks that could be supported with the Mobility Fund Phase I budget of $300 million. Because such optimization can be difficult to solve with large numbers of partially overlapping package bids, the Bureaus would limit the maximum geographic scope and the total number of package bids that a bidder can make under this approach. In the *USF/ICC Transformation Order,* the Commission noted that it would not expect that any aggregation would exceed the bounds of one CMA and its proposal would require that all the census blocks covered by any given bid be within a single CMA. Moreover, the Bureaus would permit bidders to submit at most three bids per CMA. Based on the preliminary list of potentially eligible census blocks in Attachment A released with the *Public Notice,* the 603 CMAs that contain at least one potentially eligible census block have an average of approximately 815 potentially eligible census blocks, and in some cases several thousands, so that without limitations, the possible number of partially overlapping package bids per CMA could easily reach high numbers, which could make the auction process difficult to manage for both bidders and the Commission.

33. The Bureaus also seek comment on whether, under this approach, bidders should be permitted to place bids on *individual* census blocks in addition to the limited number of package bids per CMA. If so, should the Bureaus impose a limit on the number of bids on individual blocks that may be submitted?

34. *Determining awardees with bidder-defined aggregations.* To determine winning bids, the auction system would use a mathematical optimization procedure to identify the set of bids that maximizes the number of road miles in eligible census blocks without exceeding the $300 million budget. That is, the auction system would consider all the bids submitted and determine which combination of bids could be awarded so as to cover as many eligible road miles as possible. Under this approach, there may be some limited cases where multiple winners could receive support to cover the same eligible road miles. A single bidder cannot win duplicative support because, if its bids overlap, it can win support for only one of the bids. The Commission concluded in the *USF/ICC Transformation Order* that as a general matter Phase I of the Mobility Fund should not support more than one provider per area unless doing so would increase the number of road miles served, which is possible with partially overlapping package bids where the optimization determines that assigning support for more than one package maximizes the total road miles covered by advanced wireless services. Duplicative support for large areas is likely to be rare because the optimization would count the eligible unserved road miles in the duplicative area only once but would count the amount of support awarded to each winning bidder for the overlapping area.

35. If there is substantial overlap in the areas specified by two or more competing bidders and more than one bidder is selected, then the presence of competing providers in the same area could significantly reduce the revenues a bidder expects from customers. The Bureaus seek comment on whether this is of sufficient concern to bidders that the Bureaus should allow them to make bids contingent on the overlap being less than some percentage of the total road miles associated with their package bid.

36. *Coverage requirement with bidder-defined aggregations.* Because this approach would allow bidders to tailor their aggregations based on individual census blocks, the Bureaus seek comment on a requirement that each awardee meet a coverage threshold of 100 percent of the road miles associated with the blocks for which it is awarded support. The Bureaus also seek comment on using a different coverage requirement, such as 95 percent. Any commenter proposing a coverage requirement of less than 100 percent should justify this in light of a bidder's ability to create packages of the specific eligible blocks for which it seeks support.

37. If the auction awards support to more than one bidder for an area, the coverage requirement would apply to each winning bidder, *i.e.,* each recipient would have to deploy to the required percentage of road miles service meeting the specified minimum performance requirements associated with the type of network that recipient elected to deploy.

b. Predefined Aggregations

38. The Bureaus also seek comment on an alternative approach that would require bidding on predefined aggregations of census blocks, with support to be awarded for the eligible unserved blocks that lie within the predefined aggregations. For purposes of

bidding, all eligible census blocks would be grouped by the census tract in which they are located, and bidders would bid by tracts, not on individual blocks.

39. Under this approach, for each tract a bidder bids on, the bidder would indicate a per-unit price to cover the road miles in the eligible census blocks within that tract. The auction would assign support to awardees equal to the per-road mile rate of their bid multiplied by the number of road miles associated with the eligible census blocks within the tract as shown in the information that will be provided by the Bureaus prior to the auction. Under this approach, bidders would be able to bid on multiple tracts and win support for any or all of them.

40. The preliminary list the Bureaus release with the *Public Notice* includes approximately 491,000 unserved census blocks that would be considered potentially eligible under its criteria. If the Bureaus bundled these unserved blocks into tracts for bidding, there would be approximately 6,200 tracts. The Bureaus' goal in suggesting census tracts for this purpose is to create geographic areas closer in scale to minimum buildout areas than census blocks, making it less essential that bidders have the ability to place all-or-nothing package bids than when the basic bidding unit is a census block. Further, this approach would lend itself to a very simple method of determining winning bids.

41. In the *USF/ICC Transformation Order,* the Commission noted that the large size of census blocks in Alaska may require that bidding be permitted in individual census blocks. Accordingly, under the predefined aggregation approach, the Bureaus seek comment on not aggregating census blocks in Alaska—that is, allowing bids for support on individual eligible blocks. The average area of the Alaska census blocks on the preliminary list released with the *Public Notice* is approximately 40 square miles compared to an average area of approximately 1.1 square miles in the rest of the country. The previously stated overall average of 1.8 square miles per unserved block included the Alaska census blocks in the calculation. Since census blocks in Alaska may be closer in size to a minimum scale of buildout than are most blocks in the rest of the country, bidders on areas in Alaska may wish to have the flexibility to bid on individual census blocks. The Bureaus also seek comment on whether outside of Alaska they should use another geographic area, in addition to tracts, to predefine aggregations of eligible census blocks. For instance, should the Bureaus shift from grouping blocks by census tracts to grouping them in smaller geographic units such as census block groups where a tract exceeds a certain size, such as 100 square miles?

42. The Bureaus ask whether commenters believe that package bidding of predefined aggregations would be helpful, and if so, they seek input on the specific need for package bidding and whether that need could be met by providing for limited packaging of up to three contiguous tracts.

43. *Determining awardees with predefined aggregations.* Under this approach, to determine awardees, the auction system would rank all bids from lowest to highest based on the per-road mile bid amount, and assign support first to the bidder making the lowest per-road mile bid. The auction system would continue to assign support to the next lowest per-unit bids in turn, as long as support had not already been assigned for that geographic area, and would continue until the sum of support funds of the winning bids was such that no further winning bids could be supported given the funds available. When calculating how much of the budget remains, for each winning bid the auction system will multiply the per-unit rate bid by the total number of road miles in the uncovered blocks. This is because an awardee may receive support for up to 100 percent of the road miles in the blocks for which it receives support. Ties among identical bids—in the same amount for covering the same census tract—would be resolved by assigning a random number to each bid and then assigning support to the tied bid with the highest random number. A bidder would be eligible to receive support for each of its winning bids equal to the per-unit rate of a winning bid multiplied by the number of road miles in the eligible census blocks covered by the bid, subject to meeting the obligations associated with receiving support.

44. Because using the ranking method would likely result in monies remaining available from the budget after identifying the last lowest per-unit bid that does not exceed the funds available, the Bureaus propose to continue to consider bids in order of per-unit bid amount while skipping bids that would require more support than is available. The Bureaus would award such bids as long as support is available and the per-unit bid amount does not exceed the previously awarded bid by more than twenty percent. In the event that there are two or more bids for the same per-unit amount but for different areas and remaining funds are insufficient to satisfy all of the tied bids, the Bureaus seek comment on awarding support to that combination of such tied bids that would most nearly exhaust the available funds. In the highly unlikely event that such tied bids would use the available funds to an equal extent, the Bureaus would use a random number tie breaker.

45. *Coverage requirement with predefined aggregations.* Under this approach, awardees would be required to cover at least 75 percent of the road miles associated with the eligible blocks in the tracts for which they receive support. This requirement would apply to the total number of road miles in the eligible census blocks in each census tract or other predefined aggregation on which bids are based, and counting the road categories used for unserved units. Pursuant to the *USF/ICC Transformation Order* awardees meeting the minimum coverage requirement could receive their winning bid amount for those road miles and for any road miles covered in excess of the 75 percent minimum, up to 100 percent of the road miles associated with the unserved blocks, subject to the rules on disbursement of support.

c. Other Aggregation Options

46. In connection with these questions about alternative approaches to census block aggregation, the Bureaus note that they also may consider a package bidding auction design. Each bid would specify a set of census blocks, a fixed amount of support to be paid if any of the census blocks identified in the bid is selected for an award, and a separate individual amount of support specific to each census block in the package. Unlike the package bids under its proposed bidder-defined approach where a package bid would constitute an all-or-nothing bid to cover a group of eligible census blocks, under this option, a package bid would consist of an offer to serve any subset of the areas included in the package. To select awardees, an optimization would consider the bids on all potential subsets of areas and select winners so as to maximize the number of road miles covered without exceeding the $300 million budget. If awarded support, a bidder would be eligible to receive an amount equal to the fixed price associated with the bid plus the sum of the individual area-specific prices in the awarded combination of areas. Because this approach would allow bidders to tailor their aggregations based on individual census blocks, the Bureaus seek comment on whether each awardee would have to meet a coverage requirement of 100 percent, or a lower

percentage such as 95 percent, of the road miles associated with the blocks for which it is awarded support. While this bidding structure imposes some limitations on bidders, it provides them a relatively simple means of expressing the support they would require for the various combinations of areas in each package bid they submit. Such an aggregation option could be used with census blocks as the minimum geographic areas. Or it could be used to provide for package bidding of predefined aggregations of eligible census blocks—*e.g.,* census tracts.

d. Evaluating the Aggregation Options

47. The Bureaus seek comment on the aggregation options. Commenters should consider the related issues such as package bidding limits, determination of awardees, and coverage requirements, in advocating the desirability of any particular approach. In addition, commenters should include an evaluation of the benefits and costs associated with the position they take on these options.

48. Under the Bureaus proposed bidder-defined aggregation approach, bidders could tailor their bids to include specific eligible census blocks within certain limits. They would be subject to a coverage requirement more stringent than the minimum of 75 percent required by the rules, and potentially as high as 100 percent, because bidders would be free to define the census blocks they wish to cover. The Bureaus ask commenters to provide input on the proposed limit of three packages within a CMA and the restriction that no package be larger than a CMA. Would such limits on the number and size of packages enable efficient providers seeking support only on very small packages to win support for those packages in the auction? The Bureaus also seek comment on whether this approach would help bidders to closely configure their bids to the geographic coverage of the cell sites that they would upgrade or build out to provide advanced wireless service.

49. Commenters should also provide input on whether the predefined aggregation approach would allow bidders enough granularity to incorporate Mobility Fund Phase I support into their business plans considering that awardees would be required to cover at least 75 percent of the road miles associated with the eligible blocks in the tracts for which they receive support. The Bureaus also ask whether the predefined aggregation approach would meet the needs of bidders to take advantage of significant geographic economies of scale or scope. In addition, the Bureaus invite input on whether this approach would allow carriers to manage adequately any potential risks relating to aggregating the areas on which they seek support.

50. In considering these interrelated questions of minimum unit size, packaging, the process for selecting winners, and coverage requirements, the Bureaus ask commenters to keep in mind the constraints that conducting an auction with a very large number of eligible areas may impose.

B. Auction Information Procedures

51. Under the Commission's rules on competitive bidding for high-cost universal service support adopted in the *USF/ICC Transformation Order,* the Bureaus have discretion to limit public disclosure of certain bidder-specific application and bidding information until after the auction, as it does in the case of spectrum license auctions. Consistent with recent spectrum license auction practice, the Bureaus propose to conduct Auction 901 using procedures for limited information disclosure. That is, for Auction 901, the Bureaus propose to withhold, until after the close of bidding and announcement of auction results, the public release of (1) information from bidders' short-form applications regarding their interests in particular eligible census blocks and (2) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. Because the Bureaus propose to conduct Auction 901 using a single round of bidding, they do not anticipate that there will be a need for release of bidding-related actions during the auction as there would be in a multiple around auction. If such circumstances were to arise prior to the release of non-public information and auction results, however, the proposal would mean that the Bureaus would not indicate the identity of any bidders taking such actions. After the close of bidding, bidders' area selections, bids, and any other bidding-related actions and information would be made publicly available.

52. The Bureaus seek comment on their proposal to implement limited information procedures in Auction 901.

C. Auction Structure

i. Bidding Period

53. The Bureaus will conduct Auction 901 over the Internet. Given the likelihood that this auction will involve large numbers of bids (based on the number of potentially eligible areas and the possibility of bidder-specific package bids), and because the Bureaus can provide ample time for on-line bidding during the proposed single round, telephonic bidding will not be available for Auction 901.

54. The single-round format will consist of one bidding round. The start and finish time of the bidding round will be announced in a public notice to be released at least one week before the start of the auction. The Bureaus seek comment on this proposal.

ii. Information Relating to Auction Delay, Suspension, or Cancellation

55. For Auction 901, the Bureaus propose that, by public notice or by announcement during the auction, they may delay, suspend, or cancel the auction in the event of natural disaster, technical failures, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority would be solely within their discretion. The Bureaus seek comment on this proposal.

D. Bidding Procedures

i. Maximum Bids and Reserve Prices

56. Under the Commission's rules on competitive bidding for high-cost universal service support adopted in the *USF/ICC Transformation Order,* the Bureaus have discretion to establish maximum acceptable per-unit bid amounts and reserve amounts, separate and apart from any maximum opening bids.

57. The Bureaus propose not to establish any maximum acceptable per-unit bid amounts, reserve amounts, or maximum opening bid amounts. Because this auction is being conducted with a budget that is not likely to cover support for all of the areas receiving bids, the Bureaus believe that the competition across the eligible areas will constrain the bid amounts. Nevertheless, the Bureaus seek comment on whether to establish reserve and/or maximum or minimum bids in Auction 901. The Bureaus further seek comment on what methods should be used to calculate reserve prices and/or maximum or minimum bids if they are adopted. Commenters are advised to support their claims with valuation analyses and suggested amounts or formulas.

ii. Bid Removal

58. For Auction 901, the Bureaus propose and seek comment on the following bid removal procedures. Before the end of the single round of bidding, a bidder would have the option of removing any bid it has placed. By removing a selected bid(s), a bidder may effectively undo any of its bids placed within the single round of bidding. Once the single round of bidding ends, a bidder may no longer remove any of its bids. The Bureaus seek comment on this proposal.

E. Default Payments

59. In the *USF/ICC Transformation Order,* the Commission determined that a winning bidder in a reverse auction for high-cost universal service support that defaults on its bid or on its performance obligations will be liable for a default payment. Under the competitive bidding rules adopted in the *USF/ICC Transformation Order,* bidders selected by the auction process to receive support have a binding obligation to file a post-auction long-form application—by the applicable deadline and consistent with other requirements of the long-form application process—and failure to do so will constitute an auction default. In addition, the Mobility Fund Phase I rules provide that the failure, by any winning bidder authorized to receive support, to meet its minimum coverage requirement or adequately comply with quality of service or any other requirements will constitute a performance default. The Bureaus have delegated authority to determine in advance of Auction 901 the methodologies for determining the auction and performance default payments. Here the Bureaus seek comment on how to calculate the auction default payments that will be applicable for Auction 901.

i. Auction Default Payment

60. As noted in the *USF/ICC Transformation Order,* failure to fulfill auction obligations, including those undertaken prior to the award of any support funds, may undermine the stability and predictability of the auction process and impose costs on the Commission and the Universal Service Fund (USF). To safeguard the integrity of the Mobility Fund Phase I auction, the Bureaus seek comment on an appropriate payment for auction defaults, which will be deemed to occur if a bidder selected by the auction mechanism does not become authorized to receive support after the close of the bidding, *e.g.,* fails to timely file a long form application, is found ineligible or unqualified to be a recipient of Mobility Fund Phase I support, has its long-form application dismissed for any reason, or otherwise defaults for any reason after the close of the auction. An auction default could occur at any time between the close of the bidding and the authorization of support for each of the winning bidders. Aside from not awarding support to the defaulting bidder, the Bureaus note that a defaulted bid would not otherwise result in a change to the set of awardees originally selected by the auction mechanism.

61. The Bureaus propose to calculate the auction default payment using a percentage, not to exceed 20 percent, of the total defaulted bid. Specifically, the Bureaus would use a rate of five percent of the total defaulted bid. The Bureaus would apply the percentage to the total amount of support assigned based on the bid amount for the geographic area covered by the defaulted bid(s). The Bureaus believe that this amount, below their maximum percentage, will protect against the costs to the Commission and the USF of auction defaults and provide bidders sufficient incentive to fully inform themselves of the obligations associated with participation in the Mobility Fund Phase I and to commit to fulfilling those obligations. Under this method of calculating the default payment, bidders would be aware ahead of time of the exact amount of their potential liability based on their bids.

62. The Bureaus seek comment on this proposal. The Bureaus ask commenters to assess whether their proposal to use a default payment percentage of five percent will be adequate to deter insincere or uninformed bidding, and safeguard against costs to the Commission and the USF that may result from such auction defaults without unduly discouraging auction participation, particularly given that liability for the auction default payment will be imposed without regard to the intentions or fault of any specific defaulting bidder. The Bureaus also seek comment on whether they should use an alternative methodology, such as basing the auction default payment on the difference between the defaulted bid and the next best bid(s) to cover the same number of road miles as without the default. Commenters advocating such an approach should explain with specificity how such an approach might work under the options the Bureaus present for auction design. In addition, the Bureaus seek comment on whether, prior to bidding, all applicants for Auction 901 should be required to furnish a bond or place funds on deposit with the Commission in the amount of the maximum anticipated auction default payment. The Bureaus ask for specific input on whether a bond or deposit would be preferable for this purpose and on methodologies for anticipating the maximum auction default payment.

ii. Performance Default Payment

63. Pursuant to the Mobility Fund Phase I rules adopted in the *USF/ICC Transformation Order,* a winning bidder will be subject to a performance default payment if it fails or is unable to meet its minimum coverage requirement, other service requirements, or any other condition of Mobility Fund Phase I support. In addition to being liable for a performance default payment, the recipient will be required to repay the Mobility Fund all of the support it has received and, depending on the circumstances involved, could be disqualified from receiving any additional Mobility Fund or other USF support. The Bureaus may obtain their performance default payment and repayment of a recipient's Mobility Fund Phase I support by drawing upon the irrevocable stand-by LOC that winning bidders will be required to provide.

64. The Bureaus propose to assess a 10 percent default payment where a winning bidder fails to satisfy its performance obligations. The percentage would be applied to the total level of support for which a winning bidder is eligible. Under this proposal, the LOC would include an additional 10 percent based on the total level of support for which a winning bidder is eligible. While both auction defaults and performance defaults may threaten the integrity of the auction process and impose costs on the Commission and the USF, an auction default occurs earlier in the process and may facilitate an earlier use of the funds that were assigned to the defaulted bid consistent with the purposes of the universal service program. Thus, the Bureaus believe that the amount of a performance default payment should be somewhat higher than the amount of the auction default payment. The Bureaus seek comment on their proposal for calculating the performance default payment. Will a performance default payment of 10 percent of the defaulted support level be effective in ensuring that those authorized to receive support will be capable of meeting their obligations and protect against costs to the Commission and the USF without unduly discouraging auction participation?

F. Reasonably Comparable Rates

65. *Reasonably Comparable Rates.* Mobility Fund Phase I recipients must certify that they offer service in areas with support at consumer rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas. Recipients will be subject to this requirement for five years after the date of award of support. Recipients must offer service plans in supported areas that meet the public interest obligations specified in the Commission's Mobility Fund rules and that include a stand-alone voice service plan. The Commission delegated authority to the Bureaus to specify how support recipients could demonstrate compliance with this rate certification. The Commission has undertaken to have the Bureaus develop surveys of voice and broadband rates generally that should be completed before the later phases of the Connect America Fund and the Mobility Fund. In order to offer Mobility Fund I support at the earliest time feasible, however, the Commission recognized that the Bureaus might have to implement an approach to the reasonably comparable rates requirement without being able to rely upon the information that will be collected through the surveys. The Bureaus propose to do so in implementing Mobility Fund Phase I. Commenters offering alternatives to their proposal should address the feasibility of implementing their alternative in advance of the deadlines for parties to participate in competitive bidding for Mobility Fund Phase I support. In addition, the Bureaus request that commenters describe the costs and benefits associated with the position they advocate.

66. To provide recipients with flexibility to tailor their offerings to consumer demand while complying with the rule, the Bureaus propose that they deem a Mobility Fund Phase I support recipient compliant with the terms of the required certification if it can demonstrate that its rates for services satisfy the requirements and if it provides supporting documentation. The Bureaus seek comment on all aspects of this proposal, in particular whether it meets the goal of assuring that supported services are provided at rates reasonably comparable to those in urban areas, while allowing recipients to have appropriate flexibility in structuring their offerings. The Bureaus also seek comment on any potential alternatives. For example, is there a readily available set of benchmark urban rates for mobile voice and broadband service that the Bureaus could use with respect to Phase I of the Mobility Fund, pending the Commission's planned implementation of surveys with respect to voice and broadband rates for assuring reasonably comparable rates with respect to supported on-going service?

67. Under the Bureaus' proposed approach, a recipient could demonstrate compliance with the required certification that its rates are reasonably comparable if each of its service plans in supported areas is substantially similar to a service plan offered by at least one mobile wireless service provider in an urban area and is offered for the same or a lower rate than the matching urban service plan. This document discusses how urban areas should be defined for this purpose below. Any provider that itself offers the same service plan for the same rate in a support area and in an urban area would be able to meet this requirement. The Bureaus seek comment on whether a support recipient should be required to make this comparison for all of its service plans. Would it be sufficient if it could make this comparison for its required stand-alone voice plan and one of its other plans offering broadband? Or should it be required to make this comparison for a set of its plans adopted by a specified percentage of its customers, for example 50 percent?

68. Solely for purposes of Phase I of the Mobility Fund, any rate equal to or less than the highest rate for a matching service charged in an urban area would be reasonably comparable to, *i.e.,* within a reasonable range of, rates for similar service in urban areas. Urban areas are generally served by multiple and diverse providers offering a range of rates and service offerings in competition with one another. Consequently, the Bureaus presume that even the highest rate would qualify as being within a reasonable range of rates for similar service in urban areas, because the rates for the matching urban services reflect the effects of competition in the urban area. Under this approach, the supported party must offer services at rates within the range but that do not exceed one particular rate that is presumed to be a part of that range. Should the Bureaus require additional information to validate this assumption? For example, should an urban service used for matching be required to have a certain number of subscribers or percentage of the relevant market in order to demonstrate its market acceptance? Do the Bureaus need to be concerned that recipients may seek to game this standard by using an urban rate for comparison that does not reflect a true market rate? How can the Bureaus address any such concerns?

69. The Bureaus would retain discretion to consider whether and how variable rate structures should be taken into account. For example, should a supported stand-alone voice plan that offers 1,000 minutes a month for $50 and additional minutes at $0.08 per minute be considered more expensive than a plan in an urban area that offers 2,000 minutes a month for $100 and additional minutes at $0.10 per minute? Similarly, there may be circumstances under which data plans with equivalent prices-per-unit match each other even if there are other differences in the plans. The Bureaus propose to address such issues on a case-by-case basis and welcome comment on how to address such circumstances.

70. *Urban Areas.* For purposes of this requirement, the Bureaus propose defining ''urban area'' as one of the 100 most populated CMAs in the United States. A list of the top 100 CMAs is included in Appendix C of the *Public Notice.* Multiple providers currently serve these areas—99.2 percent of the population in these markets is covered by between four to six operators—offering a range of different service plans at prices generally constrained by the numerous providers. Are there other definitions of ''urban area'' that commenters believe the Bureaus should consider for purposes of this requirement? In addition, the Bureaus seek comment on whether parties should be required to make comparisons only to a subset of the most populated CMAs that are geographically closest to the supported area, such as the 30 or 50 of the top 100 CMAs that are closest to the supported service area. This might protect against regional economic variations distorting the range of prices useable for comparison.

V. Presentations Subject to *Ex Parte* Rules

71. The proceeding the *Public Notice* 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 47 CFR 1.1206(b). In proceedings governed by 47 CFR 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. Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Gary Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2012–3174 Filed 2–9–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, February 15, 2012 at 2 p.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This Hearing Will Be Open to the Public.

Item To Be Discussed

Audit Hearing: National Right to Life Political Action Committee Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Commission Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

Person to Contact for Information: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2012–3257 Filed 2–8–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

February 7, 2012.

TIME AND DATE: 10 a.m., Thursday, February 16, 2012.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Mach Mining, LLC,* Docket Nos. LAKE 2010–1–R, et al.; and *Secretary of Labor* v. *Mach Mining, LLC,* Docket Nos. LAKE 2010–190, et al. (Issues include whether the Secretary's termination of an order issued for mining without an approved ventilation plan constituted approval of the operator's proposed ventilation plan.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2012–3227 Filed 2–8–12; 11:15 am]

BILLING CODE 6735–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Renewal of a Currently Approved Collection; Prohibition on Funding of Unlawful Internet Gambling

AGENCY: Board of Governors of the Federal Reserve System (''Board'') and Departmental Offices, Department of the Treasury (''Treasury'') (collectively, the ''Agencies'').

ACTION: Submission for OMB review; comment request.

SUMMARY: Currently, the Treasury is soliciting comment concerning the currently approved recordkeeping requirements associated with a joint rule, which is being renewed without change, implementing the Unlawful Internet Gambling Enforcement Act of 2006 (the ''Act''). The Board has approved this information collection under its delegated authority from OMB. This notice is published jointly by the Agencies as part of their 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 (44 U.S.C. 3506(c)(2)(A)).

DATES: Comments must be submitted on or before March 12, 2012.

ADDRESSES: Interested parties are invited to submit written comments to either or both of the Agencies. All comments, which should refer to the Office of Management and Budget (OMB) control numbers, will be shared between the Agencies. Direct all written comments as follows:

Board: You may submit comments, identified by OMB control no. 7100–0317, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at: *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

Treasury: You may submit comments, identified by OMB control no. 1505–0204, by regular mail to Robert B. Dahl,

Treasury Department Clearance Officer, U.S. Department of the Treasury, 1750 Pennsylvania Avenue NW., Room 11020, Washington, DC 20220. In addition, comments may be sent by fax to (202) 927–6797, or by electronic mail to *Robert.Dahl@treasury.gov.* In general, the Treasury will make all comments available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for public inspection and copying in the Treasury library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC, 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect comments by calling (202) 622–0990. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit comments that you wish to make publicly available.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the Agencies by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Paperwork Reduction Project (1505–0204 for Treasury or 7100–0317 for the Board),Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the collection may be obtained by contacting:

Board: Cynthia Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

Treasury: Robert B. Dahl, Treasury Department Clearance Officer, (202) 622–3119, U.S. Department of the Treasury, 1750 Pennsylvania Avenue NW., Room 11020, Washington, DC, 20220.

SUPPLEMENTARY INFORMATION: Proposal to extend OMB approval for three years, without revision, the following currently approved information collection:

Title: Prohibition on Funding of Unlawful Internet Gambling.

OMB Control Numbers:

Board: 7100–0317.

Treasury: 1505–0204.

Abstract: On November 18, 2008, the Agencies published a joint notice of final rulemaking in the **Federal Register** (73 FR 69382) adopting a rule implementing certain provisions of the Act's prohibition on the funding of unlawful Internet gambling. Identical sets of the final joint rule with identically numbered sections were adopted by the Board and the Treasury within their respective titles of the Code of Federal Regulations (12 CFR part 233 for the Board and 31 CFR part 132 for the Treasury). The compliance date for the joint rule was June 1, 2010 (74 FR 62687). The collection of information is set out in sections 5 and 6 of the joint rule.[1] Section 5 of the joint rule, as required by the Act, requires all non-exempt participants in designated payment systems to establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit transactions in connection with unlawful Internet gambling.[2] Section 6 of the joint rule provides non-exclusive examples of policies and procedures deemed by the Agencies to be reasonably designed to identify and block or otherwise prevent or prohibit transactions restricted by the Act.

Affected Public: Businesses or other for-profit and not-for-profit organizations.

Respondent burden: For the purpose of estimating burden and accounting for it with OMB, the total number of depository institutions listed for each Agency includes the number of entities regulated by the Agency or its offices and half of the remaining depository institutions and third-party processors. Each Agency is also accounting for the burden for half of the card system operators and money transmitting business operators to which the Agencies estimate the final rule applies.

Board:

Estimated number of recordkeepers: 3,300 depository institutions, 3,701 credit unions, 3 card system operators, 8 money transmitting business operators, and 3 new or de novo institutions.

Estimated average annual burden hours per recordkeeper: Ongoing annual burden of 8 hours per recordkeeper for depository institutions, credit unions, card system operators, and money transmitting business operators. One-time burden of 100 hours for new or de novo institutions.

Estimated frequency: Annually.

Estimated total annual recordkeeping burden: Ongoing burden, 56,096 hours and one-time burden, 300 hours.

Treasury:

Estimated number of recordkeepers: 4,600 depository institutions, 3,701 credit unions, 3 card system operators, 8 money transmitting business operators, and 3 new or de novo institutions.

Estimated average annual burden hours per recordkeeper: Ongoing annual burden of 8 hours per recordkeeper for depository institutions, credit unions, card system operators, and money transmitting business operators. One-time burden of 100 hours for new or de novo institutions.

Estimated frequency: Annually.

Estimated total annual recordkeeping burden: Ongoing burden, 66,496 hours and one-time burden, 300 hours.

The Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Current Actions: On September 23, 2011 the Agencies published a joint notice in the **Federal Register** (76 FR 59188) requesting public comment for 60 days on the extension, without revision, of the Prohibition on Funding of Unlawful Internet Gambling information collection. The comment period for this notice expired on November 22, 2011. The Agencies did not receive any comments and therefore will proceed with extending the information collection as proposed.

By the Board of Governors of the Federal Reserve System on February 6, 2012.

Jennifer J. Johnson,

Secretary of the Board.

Dated: February 2, 2012.

By the Department of the Treasury.

Robert B. Dahl,

Clearance Officer.

[FR Doc. 2012–3073 Filed 2–9–12; 8:45 am]

BILLING CODE 6210–01–P; 4810–25–P

[1] Section 802 of the Act requires the Agencies to prescribe joint regulations requiring each designated payment system, and all participants in such systems, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions. 31 U.S.C. 5364(a). Section 802 also requires the Agencies to include in the joint rule non-exclusive examples of reasonably designed policies and procedures. 31 U.S.C. 5364(b).

[2] 12 CFR 233.5 and 233.6; and 31 CFR 132.5 and 132.6.

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12

CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 27, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Live Oak Bancshares, Inc.,* Wilmington, North Carolina; to engage *de novo* through its subsidiary, BANKR, LLC, Wilmington, North Carolina, in data processing activities, pursuant to section 225.28(b)(14)(i) of Regulation Y.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Waytru Bancorp,* Cambridge City, Indiana; to continue to engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Dated: Board of Governors of the Federal Reserve System, February 7, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–3130 Filed 2–9–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Biodefense Science Board

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board (NBSB) will be holding a closed session by teleconference under exemption 9(B) of the Government in Sunshine Act, 5 U.S.C. 552b(c).

DATES: The February 28, 2012 NBSB closed session by teleconference is tentatively scheduled from 9 a.m. to 1 p.m. The agenda and time is subject to change as priorities dictate.

ADDRESSES: The closed session will occur by teleconference and will not be open to the public as stipulated under exemption 9(B) of the Government in Sunshine Act, 5 U.S.C. 552b(c).

FOR FURTHER INFORMATION CONTACT: MacKenzie Robertson, Acting Executive Director, NBSB, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services; 202–260–0447; fax 202–205–8508; Email: *NBSB@HHS.GOV.*

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d–7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary and/or the Assistant Secretary for Preparedness and Response on other matters related to public health emergency preparedness and response.

Background: The Board is being asked to review and evaluate the 2012 Public Health Emergency Medical Countermeasures Enterprise (PHEMCE) Strategy and Implementation Plan (SIP). Until a final document is approved by the Secretary of the Department of Health and Human Services (HHS), the development of PHEMCE SIP requires consideration and discussion of procurement-sensitive information that should not be released to the public prior to the Secretary's final decision. Premature public disclosure of the draft PHEMCE SIP would limit the Secretary's decision-making ability to effectively prioritize HHS expenditures on critical medical countermeasures. Therefore, the Board's deliberations on the new task will be conducted in closed session in accordance with provisions set forth under exemption 9(B) of the Government in Sunshine Act, 5 U.S.C. section 552b(c), and with approval by the Assistant Secretary for Preparedness and Response.

Availability of Materials: The meeting materials will be posted on the NBSB Web site at *www.phe.gov/nbsb.*

Procedures for Providing Public Input: All written comments should be sent by email to *NBSB@HHS.GOV* with ''NBSB Public Comment'' as the subject line.

Dated: February 6, 2012.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2012–3127 Filed 2–9–12; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Member Conflict Review, Program Announcement (PA) 07–318, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–3 p.m., March 7, 2012 (Closed).

Place: National Institute for Occupational Safety and Health (NIOSH), CDC, 1095 Willowdale Road Morgantown, West Virginia 26506, Telephone: (304) 285–6143.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Member Conflict Review, PA 07–318.''

Contact Person for More Information: Bernadine Kuchinski, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, Robert A. Taft Laboratories, 4676 Columbia Pkwy, MS C–7, Cincinnati, Ohio 45226; Telephone: (513) 533–8511.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: February 6, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2012–3114 Filed 2–9–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0793]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 12, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0432. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Recall Authority—21 CFR Part 810 (OMB Control Number 0910–0432)—Extension

This collection of information implements section 518(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360h(e)) and part 810 (21 CFR part 810), medical device recall authority provisions. Section 518(e) of the FD&C Act provides FDA with the authority to issue an order requiring an appropriate person, including manufacturers, importers, distributors, and retailers of a device, if FDA finds that there is reasonable probability that the device intended for human use would cause serious adverse health consequences or death, to: (1) Immediately cease distribution of such device, (2) immediately notify health professionals and device-user facilities of the order, and (3) instruct such professionals and facilities to cease use of such device.

Further, the provisions under section 518(e) of the FD&C Act set out the following three-step procedure for issuance of a mandatory device recall order:

1. If there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may issue a cease distribution and notification order requiring the appropriate person to immediately:

- Cease distribution of the device,
- Notify health professionals and device user facilities of the order, and
- Instruct those professionals and facilities to cease use of the device;

2. FDA will provide the person named in the cease distribution and notification order with the opportunity for an informal hearing on whether the order should be modified, vacated, or amended to require a mandatory recall of the device; and

3. After providing the opportunity for an informal hearing, FDA may issue a mandatory recall order if the Agency determines that such an order is necessary.

The information collected under the recall authority provisions will be used by FDA to do the following: (1) Ensure that all devices entering the market are safe and effective, (2) accurately and immediately detect serious problems with medical devices, and (3) remove dangerous and defective devices from the market.

In the **Federal Register** of November 16, 2011 (76 FR 71041), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
810.10(d)	2	1	2	8	16
810.11(a)	1	1	1	8	8
810.12(a) and (b)	1	1	1	8	8
810.14	2	1	2	16	32
810.15(a), (b), and (c)	2	1	2	12	24
810.15(d)	2	1	2	4	8
810.15(e)	10	1	10	1	10
810.16(a) and (b)	2	12	24	40	960
810.17(a)	2	1	2	8	16
Total Hours					1,082

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
810.15(b)	2	1	1	8	8

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for tables 1 and 2 of this document are based on FDA's experience with voluntary recalls under part 810 of the regulations. FDA expects no more than two mandatory recalls per year, as most recalls are done voluntarily. Since the last time this collection of information was submitted to OMB for renewal/approval, there has been one mandatory recall.

Dated: February 6, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–3098 Filed 2–9–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0096]

Draft Guidance for Industry on Determining the Extent of Safety Data Collection Needed in Late Stage Premarket and Postapproval Clinical Investigations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Determining the Extent of Safety Data Collection Needed in Late Stage Premarket and Postapproval Clinical Investigations.'' This guidance is intended to assist sponsors of clinical investigations in determining the amounts and types of safety data to collect in trials conducted late in the development of a drug for marketing approval or after approval based on what is already known about a drug's safety profile. Extensive safety data are collected in clinical trials of investigational drugs to support marketing approval (premarket) and trials conducted after approval (postmarket). FDA believes that more selective or targeted safety data collection may be possible for some late stage premarket trials and postmarket trials because certain aspects of a drug's safety profile will be sufficiently well-established that comprehensive data collection is not needed. FDA believes more selective or targeted safety data collection in appropriate circumstances may improve the quality of the safety assessment without compromising the integrity of the trial results.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 10, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lori Bickel, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6353, Silver Spring, MD 20993, 301–796–0210; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Determining the Extent of Safety Data Collection Needed in Late Stage Premarket and Postapproval Clinical Investigations.'' This guidance is intended to assist clinical trial sponsors in determining the amounts and types of safety data that should be collected during late-stage premarket and postmarket clinical investigations of a drug product based on what is already known about the safety profile of the drug.

To meaningfully weigh the risks and benefits of a drug, it is important to collect a broad range of safety-related data and develop a comprehensive safety profile of a drug. In some cases, however, certain aspects of the safety profile may be well-established prior to the completion of clinical trials to support marketing approval of an investigational drug. Similarly, for a marketed drug being studied for a new use, much of the existing safety profile for the approved use may be relevant to the new use. If certain aspects of a safety profile are well-established, it may not be necessary to collect certain types of safety data in clinical trials because the data would not contribute anything additional to the safety profile and may even have negative consequences (*e.g.,* serve as a disincentive to clinical investigators). In those settings, more targeted or selective data collection can be used to focus on collecting data that will further contribute to the safety profile.

The draft guidance identifies the types of safety data collected and recommends more selective or targeted safety data collection in a variety of circumstances, offers suggestions on methods that may be used to conduct selective or targeted data collection where appropriate, and highlights circumstances in which comprehensive data collection is generally needed.

This draft guidance is being developed consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on determining the extent of safety data collection needed in late stage premarket and postapproval clinical investigations. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the

requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm or http://www.regulations.gov*.

Dated: February 6, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–3096 Filed 2–9–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Multi-Center Study of Tamsulosin for Ureteral Stones in the Emergency Department.

Date: March 26, 2012.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Collaborative Interdisciplinary Team Science in NIDDK Research Areas (R24)—Barrett's Oesophagus and IBD.

Date: March 30, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; LRP Reviews.

Date: March 30, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 6, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–3153 Filed 2–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Global Rare Diseases Patient Registry and Data Repository (GRDR) Notice and Request for Information (RFI)

SUMMARY: The Office of Rare Diseases Research (ORDR), an organizational component of the National Center for Advancing Translational Sciences (NCATS), National Institutes of Health (NIH), is inviting patient organizations without a patient registry and those with established patient registries to be considered for participation in a two-year pilot project to establish the Global Rare Diseases Patient Registry and Data Repository (GRDR), and to submit background information about their organization for consideration by the project's selection committee. More information may be found at *http://rarediseases.info.nih.gov/GRDR.*

The goal of the GRDR is to enable data analysis within and across many rare diseases and to facilitate clinical trials and other studies. An interface will be developed to accept de-identified patient data from existing patient registries to promote data sharing.

The GRDR will serve rare disease patients and their advocacy groups seeking help and information. It will also serve investigators conducting research, clinicians treating patients, epidemiologists analyzing disease data, and investigators seeking patients for new clinical trials and initiating natural history studies.

A researcher portal will allow authorized researchers to gain access to de-identified patient data to identify potential study candidates and to learn about the natural history of disease. Because the GRDR will contain only de-identified data, investigators will recruit prospective participants through the patient organizations. Direct contact with the prospective participants would occur only after the patient has granted permission.

In order to aggregate data from different registries to facilitate pan-disease analysis, data must be captured and collected in a standardized manner. Use of Common Data Elements (CDEs) facilitates the standardization of data collection and allows for harmonization, sharing, and exchange of information across registries. ORDR has developed a set of minimal CDEs that have been accepted and adopted by numerous national and international patient advocacy groups and professional organizations globally. To develop organ systems and disease specific CDEs, ORDR is coordinating and collaborating with the various NIH components, patient advocacy groups, and professional organizations that already have developed similar CDEs or are in the process of developing them.

The purpose of this pilot program is to test the different functionalities of the GRDR. A total of 24 organizations will be selected. Twelve organizations with established registries and 12 organizations that have no registry will be chosen to participate.

The 12 patient organizations without patient registries will be selected to assist in testing the GRDR and in the implementation of the ORDR Common Data Elements (CDEs) when establishing new patient registries. These organizations will participate in the development and promotion of a new patient registry for their rare disease. The GRDR program will fund the development and hosting of the registry during the pilot program. Thereafter, the patient registry is expected to be self-sustainable.

The 12 established patient registries will be selected to integrate their de-identified data into the GRDR to evaluate the data mapping and data export/import processes. The GRDR team will assist these patient organizations in mapping their existing registry data to the CDEs. Participating organizations (with patient registries) must have a means to export their de-identified registry data into a specified data format that will facilitate loading the data into the GRDR on a regular basis. A HIPAA compliant server infrastructure and secure file transmission protocols will be implemented to protect patient privacy. The Global Unique Identifiers (GUID) program developed by the National Database for Autism Research (NDAR) will be used to assign unique patient identifiers. This will help eliminate duplication and enable integration with tissue repositories in a de-identified manner. Participating registries will gain access to all collected patient and biospecimen information to stimulate collaboration to accelerate the development of therapeutics, drugs and hopefully cures for the rare diseases.

During the two-year pilot project, a web-based template will be developed to assist other patient groups that wish to establish their own patient registry. A HIPAA compliant hosting facility will provide a secure environment to protect properly consented de-identified patient information.

Background: The GRDR project is a follow-up to the January 2010 ORDR workshop, ''Advancing Rare Disease Research: the Intersection of Patient Registries, Biospecimen Repositories, and Clinical Data.'' Information on this workshop can be found at http://rarediseases.info.nih.gov/PATIENT_REGISTRIES_WORKSHOP/.

The ORDR, in collaboration with PatientCrossroads, Children's Hospital of Philadelphia, and Medscape, launched a pilot project to establish the GRDR to collect patient clinical information without personal identifiers (de-identified information compiled by the federal common rule and HIPPA regulations) for research.

The PatientCrossroads registry platform, utilized by many rare disease organizations to collect patient self-report medical history and diagnostic testing information, will be deployed for the 12 new registries. PatientCrossroads will provide all technology, hosting, and management of the GRDR program. Medical oversight and recommendations of CDEs for each participating registry will be provided by Children's Hospital of Philadelphia. Medscape will provide input and recommendations on marketing, promotion, Continuing Medical Education (CME) and physician training programs.

Although any given condition is rare and there might be few patients with each disease, the cumulative public health burden of rare diseases is significant, with great unmet medical needs collectively. Because rare diseases are so uncommon, no single institution, and in many cases no single country, has sufficient numbers of patients to conduct clinical trials and translational research studies. Geographic dispersion of patients has been a major impediment to patient recruitment into clinical trials.

Best estimates are that fewer than 20% of rare diseases have patient registries. Most of these are operated by patients' organizations or academic researchers. Most registries are country-specific, but there are some international efforts. For registry developers and those responsible for providing oversight and maintenance, there is a need for an established forum to share experiences. Each time a new registry is developed, it is started from scratch using a different platform with no ability to ''talk'' to other registries, share data, and exchange information. There is a consensus in the community that there is a need for an infrastructure for rare disease patient registries.

In recognition of both barriers and public health imperatives to advance knowledge regarding optimal methods of improving health and well-being of rare disease patients, the ORDR has embarked on an initiative to establish an infrastructure for an Internet-based, federated global patient registry with the capability to link to patient clinical information to biospecimens. This global registry will develop or utilize existing common data elements, standards, and vocabularies that would provide a forum for exchange of data, experiences, and knowledge. The future goal is to create a partnership with different sectors of the community including advocacy, research, and industry organizations. This joint effort will reduce the costs of developing and maintaining an international registry for many of the rare disease patient advocacy groups.

A federated model requires that individual registries are developed, and those already in existence are enhanced to ensure that they are interoperable—i.e., data are defined in the same way, use the same standards, and use the same vocabulary. Similar to the open-source software community, ORDR believes that an open-science community for rare diseases is needed. Such a community would ensure that the conditions necessary for data exchange are addressed by defining common data-sets, data standards, and vocabulary, and provide a forum for exchange of experience and knowledge. The goal is to increase data compatibility, broaden accessibility, and collect patient data and biospecimen information to accelerate the development of therapeutics, drugs, and cures for the rare diseases.

This global rare disease registry infrastructure will draw new interest in rare diseases from academic researchers and the pharmaceutical industry because it will assist in the recruitment of patient participants much faster and at much lower cost and enable the design of more effective clinical trials. Going forward, ORDR expects the GRDR to sustain itself as a public-private partnership.

Because of the importance of biospecimens as research tool to accelerate research and better facilitate the understanding of the underlying pathogenesis of rare diseases, GRDR will have the capability of linking patient data and medical information to donated biospecimens using a double coded voluntary unique patient identifiers such as the GUID system, which has been developed by National Database for Autism Research (NDAR), a project which recently was chosen as finalist in the HHSinnovates program. For more information, go to http://jamia.bmjjournals.com/content/17/6/689.full.pdf. The link to biospecimens will be interfaced with the patient registry-associated biorepositories and with the Rare Disease Human Biospecimens/Repositories (RD–HUB), and found at http://biospecimens.ordr.info.nih.gov/.

Information Requested: Patient advocacy organizations without a patient registry and those with established patient registries that wish to be considered by the selection committee for the GRDR pilot project are encouraged to submit contact and background information about their

organization and the rare disease(s) or condition(s) that they represent. The information provided should address the eligibility and selection criteria below.

Organizations must meet the following eligibility criteria to submit a response.

Eligibility Criteria

a. Represent a rare disease/condition as defined by law (affects fewer than 200,000 individuals in the United States).

b. Maintain a hard copy or an electronic email list of patients affected by the specific disease/condition.

c. Be willing to seek agreement by their members to share their de-identified data with the GRDR, other databases, and the research community as part of an Institutional Review Board (IRB) approved informed consent.

d. Agree to adopt the ORDR Common Data Elements and elements of the ORDR common consent form template.

e. Have a scientific or medical advisory board to assist on ethical issues of privacy human subject protection, data coding and transmission, as well as issues related to data standards, curation, coding and transmission, scientific issues related to research proposals, and other issues as needed.

Organizations that meet the eligibility criteria are asked to provide a short description of how they will address the selection criteria which are listed below. Please note that the response for each criterion has a word limit and each criterion will be weighed accordingly as indicated.

1. Have a well-defined, credible vision and purpose for establishing a registry. (300 words, weigh 30 points)

2. Have a good plan to sustain the newly established or already existing registry beyond the 2 years of the pilot project. (150 words, weigh 20 points)

3. Have, or plan to develop, a feasible system to capture patient updates of their medical information as well as updates of patients' medical information from healthcare providers. (150 words, weigh 10 points)

4. Agree to assist in the translation of their registry into multiple languages as needed to facilitate the inclusion of non-English speaking participants and appear to be capable of providing such assistance. The GRDR will use English only. (150 words, weigh 10 points)

5. Have a good plan for data verification by an individual with a medical background. (150 words, weigh 10 points)

6. Are engaged or willing to collaborate with other organizations serving the same or related diseases. (150 words, weigh 10 points)

7. Have a developed means of communication with the public, e.g. electronic mailing lists, newsletter, Web site and other social networking media. (150 words, weigh 5 points)

8. Have, or plan for, support to navigate both future registry activities and community outreach. (150 words, weigh 5 points)

The selection committee, comprised of individuals with medical background, patient advocacy leaders, and others, will rank the submissions from the patient groups based on the selection criteria. ORDR will make the final selections of the patient groups based on rare disease categories to achieve maximum distribution of the different rare diseases. In addition, an effort will be made to ensure that large and small patient organizations will be included, *i.e.,* half from organizations that represent a rare disease with more than 2,500 patient participants and half from organizations with less than 2,500 patient participants (based on hard copy or the electronic contact list).

This invitation and related background information will be available on the ORDR Web site http://rarediseases.info.nih.gov/GRDR and distributed through various communication tools. Selected organizations will be notified and their names will be posted on the ORDR Web site.

How To Submit a Response: Reponses will be accepted for 30 days following publication of this notice. All responses must be submitted via the Web site at: http://rarediseases.info.nih.gov/GRDR. An online form will be available to submit the requested information. Submitters are requested not to exceed the number of characters indicated on the online form. Submitted information will not be considered confidential although each submission will be stored using a login and a password.

This Request for Information (RFI) notice provides information and selection criteria only. It should not be construed as a solicitation or as an obligation on the part of the Federal Government, the NIH, or the ORDR. The ORDR does not intend to make any awards to pay for the preparation of any information submitted or for the Government's use of such information.

ORDR will use the information submitted in response to this RFI at its discretion and will not provide comments to any responder's submission. However, names of patient organizations that are selected in response to this RFI will be posted on the Web site at: http://rarediseases.info.nih.gov/GRDR. The ORDR may contact any responder for the sole purpose of enhancing the ORDR's understanding of the RFI submission. Respondents will receive an automated email confirmation acknowledging receipt of their response, but will not receive individualized feedback. No proprietary, classified, confidential, or sensitive information should be included in your response.

DATES: Responses to this notice must be received on or before 30 days following publication of this notice.

FOR FURTHER INFORMATION CONTACT: Yaffa Rubinstein, Ph.D., Director of Patient Resources for Clinical and Translational Research, Office of Rare Diseases Research, National Institutes of Health, 6100 Executive Boulevard, Room 3A07, Rockville, MD 20892–7518, telephone 301–402–4338, Fax 301–480–9655, Web site *http://rarediseases.info.nih.gov.*

Dated: February 1, 2012.

Thomas Insel,

Acting Director, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health.

[FR Doc. 2012–3155 Filed 2–9–12; 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: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Notification of Intent To Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction Under 21 U.S.C. 823(g)(2) (OMB No. 0930–0234)—Extension

The Drug Addiction Treatment Act of 2000 (''DATA,'' Pub. L. 106–310) amended the Controlled Substances Act (21 U.S.C. 823(g)(2)) to permit practitioners (physicians) to seek and obtain waivers to prescribe certain approved narcotic treatment drugs for the treatment of opiate addiction. The legislation sets eligibility requirements and certification requirements as well as an interagency notification review process for physicians who seek waivers. The legislation was amended in 2005 to eliminate the patient limit for physicians in group practices, and in 2006, to permit certain physicians to treat up to 100 patients.

To implement these provisions, SAMHSA developed a notification form (SMA–167) that facilitates the submission and review of notifications. The form provides the information necessary to determine whether practitioners (*i.e.,* independent physicians) meet the qualifications for waivers set forth under the new law. Use of this form will enable physicians to know they have provided all information needed to determine whether practitioners are eligible for a waiver.

However, there is no prohibition on use of other means to provide requisite information. The Secretary will convey notification information and determinations to the Drug Enforcement Administration (DEA), which will assign an identification number to qualifying practitioners; this number will be included in the practitioner's registration under 21 U.S.C. 823(f).

Practitioners may use the form for three types of notification: (a) New, (b) immediate, and (c) to notify of their intent to treat up to 100 patients. Under ''new'' notifications, practitioners may make their initial waiver requests to SAMHSA. ''Immediate'' notifications inform SAMHSA and the Attorney General of a practitioner's intent to prescribe immediately to facilitate the treatment of an individual (one) patient under 21 U.S.C. 823(g)(2)(E)(ii). Finally, the form may be used by physicians with waivers to certify their need and intent to treat up to 100 patients.

The form collects data on the following items: Practitioner name; state medical license number and DEA registration number; address of primary location, telephone and fax numbers; email address; name and address of group practice; group practice employer identification number; names and DEA registration numbers of group practitioners; purpose of notification new, immediate, or renewal; certification of qualifying criteria for treatment and management of opiate dependent patients; certification of capacity to refer patients for appropriate counseling and other appropriate ancillary services; certification of maximum patient load, certification to use only those drug products that meet the criteria in the law. The form also notifies practitioners of Privacy Act considerations, and permits practitioners to expressly consent to disclose limited information to the SAMHSA Buprenorphine Physician Locator.

Since July 2002, SAMHSA has received over 25,000 notifications and has certified almost 27,000 physicians. Fifty-none percent of the notifications were submitted by mail or by facsimile, with approximately forty-one percent submitted through the Web based online system. Approximately 60 percent of the certified physicians have consented to disclosure on the SAMHSA Buprenorphine Physician Locator.

Respondents may submit the form electronically, through a dedicated Web page that SAMHSA will establish for the purpose, as well as via U.S. mail.

There are no changes to the forms and burden hours.

The following table summarizes the estimated annual burden for the use of this form.

Purpose of submission	Number of respondents	Responses per respondent	Burden per response (hr.)	Total burden (hrs)
Initial Application for Waiver	1,500	1	.083	125
Notification to Prescribe Immediately	50	1	.083	4
Notice to Treat up to 100 patients	500	1	.040	20
Total	2,050	—	—	149

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857 or email a copy to *summer.king@samhsa.hhs.gov*. Written comments must be received before 60 days after the date of the publication in the **Federal Register**.

Janine Denis Cook,

Chemist.

[FR Doc. 2012–3141 Filed 2–9–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0316]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). This Council advises the Coast Guard on recreational boating safety regulations and other major boating safety matters.

DATES: Applicants should submit a cover letter and resume in time to reach the Alternate Designated Federal Officer (ADFO) on or before April 10, 2012.

ADDRESSES: Applicants should send their cover letter and resume to the following address: Commandant (CG–5422)/NBSAC, Attn: Mr. Jeff Ludwig, U.S. Coast Guard, 2100 Second St. SW., Stop 7581, Washington, DC 20593–7581. You can also call 202–372–1061; or email *jeffrey.a.ludwig@uscg.mil.* This notice is available in our online docket, USCG–2010–0316, at *http://www.regulations.gov.* Members of the public should not submit personal information into a docket, as it becomes public record.

FOR FURTHER INFORMATION CONTACT: Jeff Ludwig, ADFO of National Boating Safety Advisory Committee; telephone 202–372–1061; fax 202–372–1908; or email at *jeffrey.a.ludwig@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (''NBSAC'') is a federal advisory committee under the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2). It was established under authority of 46 U.S.C. 13110 and advises the Coast Guard on boating safety regulations and other major boating safety matters. NBSAC has 21 members: Seven representatives of State officials responsible for State boating safety programs, seven representatives of recreational boat manufacturers and associated equipment manufacturers, and seven representatives of national recreational boating organizations and the general public, at least five of whom are representatives of national recreational boating organizations. Members are appointed by the Secretary of the Department of Homeland Security.

The Council meets at least twice each year at a location selected by the Coast Guard. It may also meet for extraordinary purposes. Subcommittees or working groups may also meet to consider specific problems.

We will consider applications for seven positions that expire or become vacant on December 31, 2012:

- Two representatives of State officials responsible for State boating safety programs;
- Two representatives of recreational boat and associated equipment manufacturers; and
- Three representatives of the general public or national recreational boating organizations.

Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. Applicants for the 2012 vacancies announced in the **Federal Register** on June 14, 2011 (76 FR 34738) will be considered for the 2013 vacancies and do not need to submit another application. Applicants for years prior to 2012 should submit an updated application to ensure consideration for the vacancies announced in this notice.

To be eligible, you should have experience in one of the categories listed above. Registered lobbyists are not eligible to serve on Federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; 2 U.S. Code 1601 Note). Each member serves for a term of three years. Members may be considered to serve consecutive terms. All members serve at their own expense and receive no salary or other compensation from the Federal Government. The exception to this policy is when attending NBSAC meetings, members are reimbursed for travel expenses and provided per diem in accordance with Federal Travel Regulations.

The Department of Homeland Security (DHS) does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are selected as a member from the general public, you will be appointed and serve as a special Government employee (SGE) as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official or his or her designate may release a Confidential Financial Disclosure Report.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Jeff Ludwig, Alternate Designated Federal Officer (ADFO) of NBSAC at Commandant (CG–5422)/NBSAC, U.S. Coast Guard, 2100 Second St. SW., STOP 7581, Washington, DC 20593–7581. Send your cover letter and resume in time for it to be received by the ADFO on or before April 10, 2012. To visit our online docket, go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2010–0316) in the Search box, and click ''Go.'' Please do not post your resume on this site.

Dated: February 5, 2012.

Paul F. Thomas,

Captain, U.S. Coast Guard, Acting Director of Prevention Policy.

[FR Doc. 2012–3103 Filed 2–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0008; OMB No. 1660–0069]

Agency Information Collection Activities: Proposed Collection; Comment Request, National Fire Incident Reporting System (NFIRS) v5.0

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning National Fire Incident Reporting System (NFIRS) v5.0. The program provides a well established mechanism, using standardized reporting methods, to collect and analyze fire incident data at the Federal, State, and local levels with a myriad of life and property saving uses and benefits.

DATES: Comments must be submitted on or before April 10, 2012.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2012–0008. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Regulatory Affairs Division, Office of Chief Counsel, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *Email.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2012–0008 in the subject line.

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 that is available via

the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Whitney, Fire Program Specialist, United States Fire Administration, National Fire Data Center, (301) 447–1836 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Commission on Fire Prevention and Control conducted a comprehensive study of the Nation's fire problem and recommended to Congress actions to mitigate the fire problem, reduce loss of life and property, and educate the public on fire protection and prevention. As a result of the study, Congress enacted Public Law 93–498, Federal Fire Prevention and Control Act of 1974, which establishes the U.S. Fire Administration to administer fire prevention and control programs, supplement existing programs of research, training, and education, and encourage new and improved programs and activities by State and local governments. Section 9(a) of the Act authorizes the Administrator, U.S. Fire Administration (USFA), to operate directly or through contracts or grants, an integrated, comprehensive method to select, analyze, publish, and disseminate information related to prevention, occurrence, control, and results of fires of all types.

Collection of Information

Title: National Fire Incident Reporting System (NFIRS) v5.0.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: OMB No. 1660–0069.

Form Titles and Numbers: The National Fire Incident Reporting System (NFIRS) v5.0.

Abstract: NFIRS provides a mechanism using standardized reporting methods to collect and analyze fire incident data at the Federal, State, and local levels. Data analysis helps local fire departments and States to focus on current problems, predict future problems in their communities, and measure whether their programs are working.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 23,890.

Number of Responses: 29,970,120.

Estimated Total Annual Burden Hours: 13,704,900 hours.

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Average burden per response (in hours)	Total annual burden (in hours)
State, Local, or Tribal Government.	NFIRS Version 5.0 Modules 1–12 (Manual).	230	1,304	299,920	68 minutes (1.13 hr).	338,910
State, Local, or Tribal Government.	NFIRS Version 5.0 Modules 1–12 (Electronic).	22,770	1,303	29,669,310	27 min (0.45 hr).	13,351,190
State, Local, or Tribal Government.	NFA Program Manager Training.	30	1	30	48 hours	1,440
State, Local, or Tribal Government.	NFA Program Manager Orientation.	60	1	60	16 hours	960
State, Local, or Tribal Government.	NFIC Training Workshop	100	1	100	16 hours	1,600
State, Local, or Tribal Government.	NFIC CD/on-site Orientation	200	1	200	4 hours	800
State, Local, or Tribal Government.	Introduction to NFRIS Distance Learning.	500	1	500	20 hours	10,000
Total	.....	23,890	.....	29,970,120	.....	13,704,900

Estimated Cost: The estimated annual operations and maintenance costs to respondents or recordkeepers resulting from the collection of information is $13,775,850. The estimated annual cost to the Federal Government is $2,794,252.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

John J. Jenkins, Jr.,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–3055 Filed 2–9–12; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2011–N179; XRS12610200000S3–123–FFO2R06000]

Sequoyah National Wildlife Refuge, Sequoyah, Muskogee, and Haskell Counties, OK; Comprehensive Conservation Plan and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) for Sequoyah National Wildlife Refuge (NWR; Refuge) in Sequoyah, Muskogee, and Haskell Counties, Oklahoma. An environmental

impact statement (EIS) evaluating effects of various CCP alternatives will also be prepared. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process. We are also requesting public comments. This notice also advises the public that we have reconsidered a 1998 notice, in which we announced our intention to develop a CCP and environmental assessment for the Refuge. Comments already received in response to the previous notice will be considered during preparation of the subject CCP/EIS. You do not need to resend those comments.

DATES: To ensure consideration, please send your written comments by April 10, 2012. We will announce additional opportunities for public input in local news media throughout the CCP process.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

Email: SequoyahNWRCCP-EIS@fws.gov.

Fax: Attention: Carol Torrez, NEPA Coordinator, at 505–248–6803.

U.S. Mail: Carol Torrez, NEPA Coordinator, U.S. Fish and Wildlife Service, Southwest Regional Office, P.O. Box 1306, Albuquerque, NM 87103.

In-Person Drop-off: You may drop off comments Monday through Friday, 7:30 a.m. to 4 p.m., at the Sequoyah NWR office headquarters, Route 1, Vian, OK.

FOR FURTHER INFORMATION CONTACT: Jeff Haas, Refuge Manager, Sequoyah NWR, Route 1, Box 18–A, Vian, OK 74962; phone: 918–773–5251 x 29; fax: 918–773–5598; or Carol Torrez, NEPA Coordinator, Southwest Regional Office, by phone at 505–248–6821, or at the address or fax above. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue our process for developing a CCP for Sequoyah NWR in Sequoyah, Muskogee, and Haskell Counties, OK. This notice complies with our CCP policy, and the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), to (1) Advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this Refuge, and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act), requires the Service to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for the Service and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time, we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Sequoyah NWR.

Sequoyah National Wildlife Refuge

In 1970, Sequoyah NWR was established on the Robert S. Kerr Reservoir as an overlay of a U.S. Army Corps of Engineers' project under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 664), expressly for migratory waterfowl.

The Refuge manages 20,800 acres of habitat for wildlife and allows for a variety of public use opportunities and experiences. The majority of the Refuge is comprised of large interior floodplain and riparian forests. Current habitat management includes the maintenance of wetlands and moist-soil units, farming of 2,754 acres by cooperative farmers, occasional prescribed burning, and invasive species control. The Refuge provides for more than 470 native wildlife species, including but not limited to: Wild turkeys, bald eagles, prothonotary warblers, wood ducks, mallards, teal, common snipe, alligator snapping turtles, white-tailed deer, map turtles, snow geese, and green tree frogs. Public use activities include all six wildlife-dependent uses: Hunting, fishing, wildlife observation, photography, interpretation, and environmental education. The Refuge allows some use supportive of these six so long as they are compatible with the Refuge's purpose and goals.

Previous Actions

We previously published a notice of intent on June 19, 1998 (63 FR 33693), stating that we intended to prepare a CCP and EA for Sequoyah NWR. We held a public meeting in March 1999, in Vian, OK. Progress continued, albeit slowed due to staff and priority changes, through fall 2009. Another scoping meeting, announced in local newspapers, was held at the Refuge Headquarters on February 23, 2010; seventeen members of the public attended this meeting and provided comments.

During the summer of 2010, the Southwest Region of the Service initiated a review of all farming programs on national wildlife refuges in the region to ensure that the programs were consistent with current laws and policies such as the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the National Wildlife Refuge System Improvement Act of 1997, and that they met the purposes for which the refuges were established. At that time, this effort was separate from the CCP planning process. Scoping for the environmental assessment (EA) on use of specified genetically modified crops in association with the cooperative farming program at Sequoyah NWR began on July 1, 2010. A draft EA on the use of genetically modified crops in association with the cooperative farming program was released on April 1, 2011. The comment period was open through May 16, 2011.

Based on the public comments already received, and subsequent

developments since scoping, we have decided to combine the assessment of using specified genetically modified crops into the CCP and determined that an environmental impact statement (EIS) would be more appropriate than an EA to ensure that a full and fair discussion of all significant environmental impacts occurs, and to inform decision-makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts and enhance the quality of the human environment. All comments we received since 1998 from scoping and meetings held on the Sequoyah National Wildlife Refuge Comprehensive Conservation Plan and the 2010 scoping effort on the Draft EA for Use of Specified Genetically Modified Crops and Chemical Herbicides in Conjunction with the Cooperative Farming Program on the Sequoyah National Wildlife Refuge, will still be considered during the EIS planning process, so you do not need to resubmit them. We will conduct the environmental review of this project and develop an EIS in accordance with the requirements of NEPA, NEPA regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and our policies and procedures for compliance with those laws and regulations.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we will address in the CCP. We have briefly summarized some of these issues below. During public scoping, we may identify additional issues.

Habitat

Concerns related to the restoration of floodplain forests and cooperative farming exist both among the public and the Refuge staff. Past tree plantings were aimed at habitat improvement and carbon sequestration; they also resulted in the closure of open areas that facilitate public opportunities for hunting and farming.

Sequoyah NWR has an on-Refuge cooperative farming program, which has a long history. This farmed acreage has been reduced over the years. Topics of concern regarding the Refuge's farming program include: (1) The number of acres farmed; (2) the methods and crops used; (3) the use of genetically modified crops (the most significant issue identified); and (4) the use of pesticides.

The issue of invasive species also exists on the Refuge, including the expansion of current colonies, the introduction of new species, and the new locations of colonies. The potential effect of climate change on Refuge habitat and associated wildlife populations was another concern expressed. Other scoping issues included wetland and riparian habitat restoration, land acquisition and easement efforts, and water quality.

Wildlife

Endangered species and other species of concern are a management focus of the Refuge. The Interior least tern was listed as endangered in 1985, and the American burying beetle was listed in 1989; both of these endangered species reside at Sequoyah National Wildlife Refuge and are managed under their respective recovery plans. The alligator snapping turtle is another species of concern on the Refuge, as the creeks, lakes, wetlands, and riparian areas at Sequoyah contain the unique habitat requirements that this species needs. Although the population of the alligator snapping turtle has been declining, the Refuge retains one of the largest populations of the turtle in the area. The planning team is concerned with ensuring that viable populations of these species are maintained.

Public Use

The appropriate balance of wildlife-dependent recreation opportunities with fish and wildlife conservation is very important to the Refuge. The interpretative and educational opportunities, materials, and facilities at Sequoyah are outdated or in need of improvements. Some members of the public are concerned about their access to and opportunities for hunting and fishing, which are the largest public uses on the Refuge. Other members of the public prefer minimizing these programs or eradicating them altogether. Increase of and improvements to the Refuge's wildlife observation and photography opportunities may also be warranted.

Facilities

Concern exists over access to the Refuge, the quality and abundance of public use facilities, and the development and maintenance of administrative facilities. Refuge access issues center on the improvement, maintenance, and accessibility of roads, boat ramps, entrance points, and nature trails. The administration of areas closed to public use during certain times of the year, increased parking, improved bathroom facilities, enhanced visitor displays, and additional boat ramps are also concerns.

Public Involvement

You may send comments anytime during the planning process by mail, email, or fax (see **ADDRESSES**). There will be additional opportunities to provide public input once we have prepared a draft CCP. Comments already received under the previous notice will be considered during preparation of the CCP/EIS. You do not need to resend these comments. The public's ideas and comments are an important part of the meaningful comments that will help determine the desired future conditions of the Refuge and address the full range of Refuge issues and opportunities.

Public Availability of Comments

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 23, 2012.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region.

[FR Doc. 2012–3107 Filed 2–9–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–FHC–2012–N030; FVHC98130406900Y4–XXX–FF04G01000]

Correction Notice for Deepwater Horizon Oil Spill; Draft Phase I Early Restoration Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for comments; correction.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), and the Framework Agreement for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill, the Federal and State natural resource trustee agencies (Trustees) prepared a Draft Early Restoration Plan and Environmental Assessment (DERP/EA) describing and proposing a suite of early restoration projects intended to commence the process of restoring natural resources and services injured or lost as a result

of the *Deepwater Horizon* oil spill, which occurred on or about April 20, 2010, in the Gulf of Mexico. On December 14, 2011, the U.S. Fish and Wildlife Service, Department of the Interior (DOI), published a notice in the **Federal Register** informing the public of the availability of the DERP/EA and seeking written comments. This notice included a mailing address error, which the Service corrects via this notice.

DATES: We will consider public comments received on or before February 14, 2012.

FOR FURTHER INFORMATION CONTACT: Brian Spears, at *FW4DWHInfo@fws.gov.*

SUPPLEMENTARY INFORMATION: On December 14, 2011, the U.S. Fish and Wildlife Service (Service), United States Department of the Interior (DOI), published a notice in the **Federal Register** (76 FR 78016) informing the public of the availability of the DERP/EA and seeking written comments on the proposed restoration alternative presented in the DERP/EA.

This notice misstated the post office box number to which commenters could send comments. The correct post office box address is:

U.S. Mail: c/o U.S. Fish and Wildlife Service, P.O. Box 2099, Fairhope, AL 36533.

The Service has taken several steps to ensure that comments sent to the incorrect post office box are routed to the correct box, including filing a change of address form and coordinating with the U.S. Postal Service directly.

Everything else in the December 14, 2011, notice, including the other methods for public comment it offered, remains the same.

Public Availability of Comments

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 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.

Author

The primary author of this notice is Harriet Deal.

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and the implementing Natural Resource Damage Assessment regulations found at 15 CFR Part 990.

Dated: February 3, 2012.

Cynthia K. Dohner,

Authorized Official, Department of the Interior.

[FR Doc. 2012–3113 Filed 2–9–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2011–N0011; FXES11130200000F5–123–FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. The Act and the National Environmental Policy Act also require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before March 12, 2012.

ADDRESSES: Marty Tuegel, Section 10 Coordinator, by U.S. mail at Division of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM at (505) 248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (*e.g.,* Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–202343

Applicant: Daniel Ginter, Albuquerque, New Mexico.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico.

Permit TE–59580A

Applicant: Rocky Mountain Ecology, Santa Fe, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) and Rio Grande silvery minnow (*Hybognathus amarus*) within New Mexico.

Permit TE–59587A

Applicant: Donald Connell, Driftwood, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*) within Texas.

Permit TE–60494A

Applicant: Wildlife World Zoo, Litchfield Park, Arizona.

Applicant requests an amendment to a current permit for husbandry and holding of Kemp's ridley sea turtle (*Lepidochelys kempii*) at the zoo in Arizona.

Permit TE–083956

Applicant: Sandy Wolf, Tucson, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of Mexican long-nosed bat (*Leptonycteris nivalis*) within Arizona.

Permit TE–181762

Applicant: Sea Turtle, Inc., South Padre Island, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys, stranding activities, holding, blood collection, and rehabilitation for Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), and leatherback (*Dermochelys coriacea*) sea turtles within Texas.

Permit TE–083956

Applicant: Krista McDermid, Manchaca, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species within Texas:

- Bee Creek Cave harvestman (*Texella reddelli*)
- Bone Cave harvestman (*Texella reyesi*)
- Braken Bat Cave meshweaver (*Cicurina venii*)
- Coffin Cave mold beetle (*Batrisodes texanus*)
- Cokendolpher Cave harvestman (*Texella cokendolpheri*)
- Comal Springs dryopid beetle (*Stygoparnus comalensis*)
- Comal Springs riffle beetle (*Heterelmis comalensis*)
- Government Canyon Bat Cave meshweaver (*Cicurina vespera*)
- Government Canyon Bat Cave spider (*Neoleptoneta microps*)
- Ground beetle (*Rhadine exilis)*
- Ground beetle *(Rhadine infernalis*)
- Helotes mold beetle (*Batrisodes venyivi*)
- Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
- Madla Cave meshweaver (*Cicurina madla*)
- Peck's Cave amphipod (*Stygobromus pecki*)
- Robber Baron Cave meshweaver (*Cicurina baronia*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
- Tooth Cave spider (*Neoleptoneta (=Leptoneta) myopica*)

Permit TE–030115

Applicant: Bureau of Land Management, Safford, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species within Arizona:

- Desert pupfish (*Cyprinodon macularius*)
- Gila chub (*Gila intermedia*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- Lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*)
- Peebles Navajo cactus (*Pediocactus peeblesianus var. peeblesianus*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)

Permit TE–043941

Applicant: James Collins, Tempe, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*) within Arizona.

Permit TE–63462A

Applicant: Michael Speegle, Buffalo Gap, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warbler (*Dendroica chrysoparia*), interior least tern (*Sterna antillarum athalassos*) and black-capped vireo (*Vireo atricapilla*) within Texas.

Permit TE–022190

Applicant: Arizona Sonora Desert Museum, Tucson, Arizona.

Applicant requests a renewal to a current permit for husbandry and holding of the following species within Arizona:

- Bonytail chub (*Gila elegans*)
- Colorado pikeminnow (*Ptychocheilus lucius*)
- Desert pupfish (*Cyprinodon macularius*)
- Gila chub (*Gila intermedia*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- Loach minnow (*Tiaroga cobitis*)
- Lesser long-nosed bats (*Leptonycteris curasoae yerbabuenae*)
- Masked bobwhite quail (*Colinus virginianus ridgwayi*)
- Mexican gray wolf (*Canis lupus baileyi*)
- Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*)
- Ocelot (*Leopardus pardalis*)
- Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*)
- Quitobaquito pupfish (*Cyprinodon eremus*)
- Razorback sucker (*Xyrauchen texanus*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Thick-billed parrot (*Rhynchopsitta pachyrhyncha*)
- Woundfin (*Plagopterus argentissimus*)
- Yaqui chub (*Gila purpurea*)
- Yaqui topminnow (*Poeciliopsis occidentalis sonorensis*)

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: January 27, 2012.

Benjamin Tuggle,

Regional Director, Southwest Region.

[FR Doc. 2012–2690 Filed 2–9–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2011–N222; BAC–4311–K9–S3]

Great Bay National Wildlife Refuge, Rockingham County, NH

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft comprehensive conservation plan (CCP) and Environmental Assessment (EA) for Great Bay National Wildlife Refuge (NWR) for public review and comment. Great Bay NWR is located in Newington, New Hampshire, and is administered by staff at Parker River NWR in Newburyport, Massachusetts. The draft CCP/EA describes three alternatives for managing Great Bay NWR for the next 15 years. Alternative B is identified as the Service-preferred alternative. Also available for public review and comment are the draft compatibility determinations, which are included as appendix C in the draft CCP/EA.

DATES: To ensure our consideration of your written comments, please send them by March 12, 2012. We will also hold public meetings. We will announce those meetings and other opportunities for public input in local news media, via our project mailing list, and on our Regional planning Web site: *http://www.fws.gov/northeast/planning/Great%20bay/ccphome.html.*

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. You may request hard copies or a CD–ROM of the documents.

Email: northeastplanning@fws.gov. Please include ''Great Bay CCP'' in the subject line of your email.

U.S. Mail: Nancy McGarigal, Natural Resource Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

Fax: Attention: Nancy McGarigal, (413) 253–8468.

In-Person Drop-off, Viewing, or Pickup: Call Parker River NWR headquarters during regular business hours at (978) 465–5753 to make an appointment to view the document at Great Bay NWR, 100 Merrimac Drive, Newington, NH 03801.

FOR FURTHER INFORMATION CONTACT: Graham Taylor, Refuge Manager, Parker River NWR, 6 Plum Island Turnpike, Newburyport, MA 01950; phone: 978–465–5753; fax: (978) 465–2807; email: *fw5rw_prnwr@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Great Bay NWR. We published our original notice of intent to prepare a CCP in the **Federal Register** on June 17, 2009 (74 FR 28722).

Great Bay NWR was established in 1992 to conserve natural diversity, protect federally listed species and other species of conservation concern, and preserve and enhance water quality. The 1,103-acre refuge is located on a portion of the former Pease Air Force Base. Despite its past land uses, including active military operations and a weapons storage area, the refuge has a diversity of habitat types including oak-hickory forest, grasslands, shrub thickets, fresh and saltwater wetlands, and open water habitats. The refuge also includes 7 miles of shoreline, and is the largest parcel of protected land on Great Bay. These habitats provide important habitat for wintering waterfowl and bald eagles, as well as shorebirds, wading birds, and other wildlife and plant species of conservation concern.

Great Bay NWR also offers a wide range of wildlife-dependent recreational opportunities. Two interpretive trails covering 2.5 miles provide visitors with excellent wildlife observation and nature photography opportunities. Additionally, the refuge offers a 2-day, white-tailed deer hunt each fall.

The refuge also includes a 29-acre conservation easement, located in Concord, New Hampshire, that is managed primarily for the federally endangered Karner blue butterfly. The easement has a mix of open pitch pine-scrub, pine hardwood, and other scrubland. Since 2008, Great Bay NWR and the Karner blue butterfly easement have been managed by staff located at Parker River NWR in Newburyport, Massachusetts.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update each CCP at least every 15 years, in accordance with the Refuge Administration Act.

Public Outreach

In June 2009, we distributed a planning newsletter to several hundred people on our project mailing list. The newsletter informed people about the planning process and asked recipients to contact us about issues or concerns they would like us to address. We also posted the newsletter on our Web site for people to access electronically. In addition, we notified the general public of our planning project, and our interest in hearing about issues and concerns, by publishing news releases in local newspapers. We also held afternoon and evening public scoping meetings on June 18, 2009, in Newington, New Hampshire. The purpose of the two meetings was to share information on the planning process and to solicit management issues and concerns. Throughout the process, refuge staff have conducted additional outreach via participation in community meetings, events, and other public forums. We have considered and evaluated all of the comments we received and addressed them in various ways in the alternatives presented in the draft CCP/EA.

CCP Alternatives We Are Considering

During the scoping process, which initiated work on our draft CCP/EA, we, other governmental partners, and the public raised the following general issues that are further detailed and addressed in the draft CCP/EA:

- Which habitats and species should be a focus for management, and how will we manage for them on the refuge?
- How can we address concerns about the biological diversity, health, and integrity of the refuges' forests, wetlands, and shoreline given limited staffing and budgets?
- Which invasive species should be a priority for control on refuge lands, and what specific techniques will we use to control them?
- How can the refuge work with partners to address regional-scale conservation concerns, such as climate change, water quality, and habitat fragmentation?
- What are the appropriate types and levels of wildlife-dependent uses to offer on the refuge? What partnership opportunities exist and what staffing levels are needed to enhance and expand our public use programs?
- How will we preserve, protect, and interpret cultural resources on refuge lands? How should we address historical structures on the refuge?
- How will we address environmental contaminants resulting from past land uses and from offsite activities?

We developed three management alternatives in the draft CCP/EA for

Great Bay NWR to address these issues and to achieve the refuge's establishment purposes, and the vision and goals we developed. The full description of the alternatives is presented in the draft CCP/EA. The alternatives identify several actions in common. All alternatives include measures to protect the rocky shoreline habitat, control invasive species, protect cultural resources, monitor for climate change impacts, distribute refuge revenue sharing payments, and continue participation in conservation and education partnerships. There are also several actions that are common to both alternatives B and C. These include constructing a new joint administrative office and visitor contact station, and evaluating the need for additional land protection.

There are other actions that differ among the alternatives. The draft CCP/EA describes each alternative in detail and relates it to the issues and concerns that arose during the planning process. Below, we provide summaries for the three alternatives.

Great Bay NWR Alternatives

Alternative A (Current Management)

This alternative is the ''No Action'' alternative required by the National Environmental Policy Act. Alternative A defines our current management activities, including those planned, funded, or underway, and serves as the baseline against which to compare alternatives B and C. Under alternative A, Great Bay NWR would remain unstaffed, and we would not change our current visitor services facilities, including existing trails and viewing platforms. Our biological program priorities would continue to be managing impoundments for migratory birds, managing grasslands for upland sandpipers and other grassland-dependent species of concern, and inventorying and controlling invasive plants. We would continue to provide wildlife observation and photography opportunities on two trails, and implement a 2-day, fall deer hunt in partnership with the New Hampshire Fish and Game Department (NHFG).

Management on the Karner blue butterfly easement would not change. We would continue to cooperate with NHFG to implement habitat management. One undeveloped trail would provide access, with limited information about the butterfly and management posted on a kiosk.

Alternative B (Habitat Diversity and Focal Species Emphasis; Service-Preferred Alternative)

Alternative B is the Service-preferred alternative. It combines the actions we believe would best achieve the refuge's purposes, vision, and goals and respond to public issues. Under alternative B, we would emphasize the management of specific refuge habitats to support focal species whose habitat needs would benefit other species of conservation concern that are found in the Great Bay region. Focal species include migrating and wintering waterfowl, migratory songbirds, breeding upland sandpiper, and rare and declining species, such as the New England cottontail and Karner blue butterfly. Habitat restoration work on refuge lands would also benefit forest-dwelling bats and migratory fish. We would also expand our conservation, research, and management partnerships to help restore and conserve the Great Bay estuarine ecosystem.

This alternative would enhance our visitor services programs, which have been limited under current management due to lack of staff. On Great Bay NWR, our improvements would include new interpretive materials, more programs for visitors to learn about the refuge and the surrounding landscape, and an extension to an existing trail that provides opportunities for wildlife observation and photography. We would also evaluate opportunities to expand the hunting program to include turkey hunting and a bow season for deer. On the Karner blue butterfly easement, we propose to install new interpretive signs, offer guided interpretive walks, and enhance our Web site with updated information.

Alternative C (Enhanced Public Use Management)

Alternative C would rely primarily on ecosystem processes and natural disturbances to restore the biological integrity, diversity, and ecological health of the refuge. All grassland and shrubland habitat on Great Bay NWR would be allowed to naturally succeed to forest. All three refuge impoundments would be removed, restoring Peverly Brook to stream habitat and returning Stubbs Pond to salt marsh. We would also remove all remaining structures in the former weapons storage area.

Under this alternative, we would expand the refuge visitor services program and public access. We would construct two new trails, and after shrubland and grassland habitats transition to forest, we would open up larger portions of the refuge to public use. The management of the Karner blue butterfly easement would be the same as that proposed under alternative B.

Public Availability of Documents

In addition to any methods in **ADDRESSES**, you can view or obtain documents from the agency Web site at: *http://www.fws.gov/northeast/planning/Great%20bay/ccphome.html.*

Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final CCP and finding of no significant impact.

Public Availability of Comments

Before including your address, phone number, electronic mail address, or other personal identifying information in your comments, 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 20, 2012.

Wendi Weber,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–3108 Filed 2–9–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO230.11100000.PH0000]

Notice of Correction to Notice of Intent To Prepare Environmental Impact Statements and Supplemental Environmental Impact Statements To Incorporate Greater Sage-grouse Conservation Measures Into Land Use Plans and Land Management Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Correction.

SUMMARY: The BLM published a Notice of Intent (NOI) on December 9, 2011 [76 FR 77008]. This Notice of Correction changes/clarifies the names of the regions that are coordinating the Environmental Impact Statements (EISs) and Supplemental EISs, extends the scoping period, and adds 11 Forest Service Land Management Plans (LMPs) to this process. The Eastern Region referred to in the previous NOI is now known as the Rocky Mountain Region; while the Western Region referred to in

the previous NOI is now known as the Great Basin Region. The added Forest Service LMPs include:

- Rocky Mountain Region
  - Colorado—Routt National Forest Plan (1998)
  - Utah—Ashley National Forest Plan (1986)
  - Utah—Manti-Lasal National Forest Plan (1986)
  - Utah—Wasatch-Cache National Forest Plan (2003)
  - Wyoming—Bridger-Teton National Forest Plan (1990)
  - Wyoming—Medicine Bow National Forest Plan (2004)
- Great Basin Region
  - Idaho—Boise National Forest Plan (2003)
  - Idaho—Challis National Forest Plan (1987)
  - Idaho—Salmon National Forest Plan (1988)
  - Idaho—Targhee National Forest Plan (1997)
  - Montana—Beaverhead-Deerlodge National Forest Plan (2009)

DATES: This notice extends the public scoping process for the EISs/Supplemental EISs an additional 45 days. Comments on issues may now be submitted in writing until March 23, 2012. Although the majority of all scoping meetings have been completed the date(s) and location(s) of any additional scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site for the Rocky Mountain Region at *http://www.blm.gov/wo/st/en/prog/more/sagegrouse/eastern.html*, and for the Great Basin Region at *http://www.blm.gov/wo/st/en/prog/more/sagegrouse/western.html.* Comments that are specific to a particular area, Resource Management Plan, or LMP should be identified as such. We will provide additional opportunities for public participation upon publication of the Draft EISs/SEISs.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Johanna Munson, Rocky Mountain Region Project Manager, telephone 307–775–6329; address 5353 Yellowstone Road, Cheyenne, WY 82009; email *jmunson@blm.gov*, or: Lauren Mermejo, Great Basin Region Project Manager, telephone 775–861–6400; address 1340 Financial Boulevard, Reno, NV 89520; *email lmermejo@blm.gov.*

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

Edwin Roberson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 2012–3193 Filed 2–9–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 53257, LLCAD06800 L17110000 FD0000]

Notice of Intent To Prepare a Draft Environmental Impact Statement for a Proposed Land Exchange Between the Bureau of Land Management and Agua Caliente Band of Cahuilla Indians in the Santa Rosa and San Jacinto Mountains National Monument, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Palm Springs-South Coast Field Office intends to prepare a Draft Environmental Impact Statement (EIS) for a proposed land exchange between the BLM and the Agua Caliente Band of Cahuilla Indians (Tribe) in the Santa Rosa and San Jacinto Mountains National Monument (Monument). This notice announces the beginning of the BLM scoping process, invites public participation, and describes how the time and place of public scoping meetings will be announced.

DATES: One or more public scoping meetings will be held in Palm Springs, California, to solicit public input on the issues and impacts that will be addressed in the Draft EIS as well as the extent to which those issues and impacts will be analyzed. All public scoping meetings will be announced at least 15 days in advance of their occurrence through local news media and the BLM Web site at *http://www.blm.gov/ca/st/en/fo/palmsprings.html.* In order to be addressed in the Draft EIS, all comments must be received no later than 30 days after the last public scoping meeting. Additional opportunities for public participation and formal comment will occur upon publication of the Draft EIS.

ADDRESSES: You may submit written comments on issues and impacts to be addressed in the Draft EIS by any of the following methods:

- *Email: AguaCalienteExchange@blm.gov.*
- *Mail:* Field Manager, Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, California 92262.

Documents pertinent to this proposed land exchange will be available for public review at the BLM Palm Springs-South Coast Field Office located at 1201 Bird Center Drive, Palm Springs, California, during regular business hours of 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Jim Foote, National Monument Manager, (760) 833–7136, or by email, *jfoote@blm.gov.*

SUPPLEMENTARY INFORMATION: On October 24, 2000, Public Law 106–351 established the Santa Rosa and San Jacinto Mountains National Monument. In accordance with section 2(b) of the Monument's enabling legislation, its purpose is to ''preserve the nationally significant biological, cultural, recreational, geological, educational, and scientific values found in the Santa Rosa and San Jacinto Mountains and to secure now and for future generations the opportunity to experience and enjoy the magnificent vistas, wildlife, land forms, and natural and cultural resources in these mountains and to recreate therein.''

On October 13, 1999, the BLM and the Tribe entered into an agreement to coordinate and cooperate in the management of Federal lands within and outside the boundaries of the Agua Caliente Indian Reservation (Reservation) within the Monument. The BLM and the Tribe agreed to meet annually to identify specific resource management, land tenure adjustment, and joint management goals, including implementation of a Memorandum of Understanding for joint identification of opportunities for acquisition and exchange of lands within the Monument.

On July 27, 2010, the BLM released Environmental Assessment (EA) No. CA–060–0010–0005 and Finding of No Significant Impact for public review and comment. This EA addressed the environmental effects of the proposed land exchange between the BLM and the Tribe. The public comment period for the EA concluded on November 19, 2010; 141 individuals, eight organizations, and three governmental entities submitted comments.

Based on public comments and upon further internal review, it was determined that preparation of an EIS is necessary to address potentially significant effects of this proposed exchange. Information in the EA will be integrated into the Draft EIS.

Public scoping will help determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide development of the EIS. At present, the BLM has identified potential effects of the proposed land exchange on cultural resources, Native American concerns, minerals, threatened and endangered species, invasive species, wild and scenic rivers, and non-motorized recreation access as preliminary issues for analysis.

All public comments submitted to the BLM about the EA released on July 27, 2010, will be retained, used to formulate alternatives and environmental analyses for the Draft EIS, and responded to in the Draft EIS. 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 request that your personal identifying information be withheld from public review, there is no guarantee that we will be able to do so.

Jim Foote,

Acting Field Manager, Palm Springs-South Coast Field Office, California Desert District, Bureau of Land Management.

Authority: 43 U.S.C. 1701 *et seq.,* 43 U.S.C. 1715–1716, 16 U.S.C. 431 note.

40 CFR 1507.7, 1508.22, and 43 CFR Subpart 2200.

[FR Doc. 2012–3118 Filed 2–9–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA 942000 L57000000 BX0000]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey and supplemental plats of lands described below are scheduled to be officially filed in the Bureau of Land Management California State Office, Sacramento, California, thirty (30) calendar days from the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

Protest: A person or party who wishes to protest a survey must file a notice that they wish to protest with the California State Director, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way, Room W–1623, Sacramento, California 95825, (916) 978–4310.

SUPPLEMENTARY INFORMATION: These surveys and supplemental plats were executed to meet the administrative needs of various federal agencies; the Bureau of Land Management, Bureau of Indian Affairs, General Services Administration or US Forest Service. The lands surveyed are:

Humboldt Meridian, California

T. 12 N., R. 2 E., dependent resurvey, subdivision and survey accepted January 20, 2012.

Mount Diablo Meridian, California

T. 1 N., R. 16 E., completion survey, corrective dependent resurvey, subdivision, and metes-and-bounds survey accepted August 30, 2011.

T. 14 N., R. 8 W., dependent resurvey and subdivision accepted January 23, 2012.

T. 32 N., R. 5 W., supplemental plat of the SE. ¼ of the SW. ¼ of section 30 accepted January 25, 2012.

San Bernardino Meridian, California

T. 4 S., R. 4 E., supplemental plat of the west ½ of section 14 accepted January 31, 2012.

Authority: 43 U.S.C. chapter 3.

Dated: February 1, 2012.

Lance J. Bishop,

Chief Cadastral Surveyor, California.

[FR Doc. 2012–3112 Filed 2–9–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON03000 L12320000.AL0000]

Notice of Correction to Notice of Intent To Collect Fees on Public Land in Mesa County, CO Under the Federal Lands Recreation Enhancement Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: On January 26, 2012, the BLM published a Notice of Intent to Collect Fees on Public Land in Mesa County, Colorado [77 FR 4058]. The BLM inadvertently published that the fee would be a Special Recreation Permit fee under 16 U.S.C. 6802(h). This Notice of Correction is intended to change the type fee being submitted to an Expanded Amenity Fee under 16 U.S.C. 6802(g)(2)(A).

FOR FURTHER INFORMATION CONTACT: Michelle Bailey, Assistant Field Office Manager, at email: *m1bailey@blm.gov,* fax (970) 244–3083, or by mail: Michelle Bailey, Assistant Field Manager, BLM, Grand Junction Field Office, 2815 H. Road, Grand Junction, Colorado 81506.

Steven Hall,

Acting State Director.

[FR Doc. 2012–3119 Filed 2–9–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of two meetings of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Review Committee will meet on November 28–29, 2012, in the Rasmuson Theater of the National Museum of the American Indian of the Smithsonian Institution, Fourth Street and Independence SW., Washington, DC 20001. This meeting will be open to the public.

The agenda for the meeting in Washington, DC on November 28–29, 2012, will include finalization of the Review Committee Report to Congress for 2012, the appointment of the subcommittee to draft the Review Committee's Report to the Congress for 2013, and discussion of the scope of the Reports; and National NAGPRA Program reports. In addition, the agenda may include requests to the Review Committee for a recommendation to the Secretary of the Interior, as required by law, in order to effect the agreed-upon disposition of Native American human remains determined to be culturally unidentifiable; presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public; requests to the Review

Committee, pursuant to 25 U.S.C. 3006 (c)(3), for review and findings of fact related to the identity or cultural affiliation of human remains or other cultural items, or the return of such items; and the hearing of disputes among parties convened by the Review Committee pursuant to 25 U.S.C. 3006 (c)(4). The agenda and materials for this meeting will be posted on or before October 29, 2012, at *http://www.nps.gov/nagpra*.

The Review Committee is soliciting presentations by Indian tribes, Native Hawaiian organizations, museums, and Federal agencies on the following two topics: (1) The progress made, and any barriers encountered, in implementing NAGPRA and (2) the outcomes of disputes that have come before the Review Committee pursuant to 25 U.S.C. 3006 (c)(4). The Review Committee also will consider other presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public. A presentation request must, at minimum, include an abstract of the presentation and contact information for the presenter(s). Presentation requests must be received by October 1, 2012.

The Review Committee will consider requests for a recommendation to the Secretary of the Interior, as required by law, in order to effect the agreed-upon disposition of Native American human remains determined to be culturally unidentifiable (CUI). A CUI disposition request must include the appropriate, completed form posted on the National NAGPRA Program Web site and, as applicable, the ancillary materials noted on the form. To access and download the appropriate form—either the form for CUI with a ''tribal land'' or ''aboriginal land'' provenience or the form for CUI without a ''tribal land'' or ''aboriginal land'' provenience—go to *http://www.nps.gov/nagpra*, and then click on ''Request for CUI Disposition Form.'' CUI disposition requests must be received by September 21, 2012.

The Review Committee will consider requests, pursuant to 25 U.S.C. 3006 (c)(3), for review and findings of fact related to the identity or cultural affiliation of human remains or other cultural items, or the return of such items, where consensus among affected parties is unclear or uncertain. A request for findings of fact must be accompanied by the completed form posted on the National NAGPRA Program Web site and, as applicable, the ancillary materials noted on the form. To access and download the form, go to *http://www.nps.gov/nagpra*, and then click on ''Request for Findings of Fact (Not a Dispute) Form.'' Requests for findings of fact must be received by August 10, 2012.

The Review Committee will consider requests, pursuant to 25 U.S.C. 3006 (c)(4), to convene parties and facilitate a dispute, where consensus clearly has not been reached among affected parties regarding the identity or cultural affiliation of human remains or other cultural items, or the return of such items. A request to convene parties and facilitate a dispute must be accompanied by the completed form posted on the National NAGPRA Program Web site and, as applicable, the ancillary materials noted on the form. To access and download the form, go to *http://www.nps.gov/nagpra*, and then click on ''Request to Convene Parties and Facilitate a Dispute Form.'' Requests to convene parties and facilitate a dispute must be received by July 16, 2012.

Submissions may be made in one of three ways:

1. Electronically, as an attachment to a message (preferred for submissions of 10 pages or less). Electronic submissions are to be sent to: *Sherry_Hutt@nps.gov*

2. By mail, on a single compact disc (preferred for submissions of more than 10 pages). Mailed submissions are to be sent to: Designated Federal Officer, NAGPRA Review Committee, National Park Service, National NAGPRA Program, 1201 Eye Street NW., 8th Floor (2253), Washington, DC 20005.

3. By mail, in hard copy.

Such items are subject to posting on the National NAGPRA Program Web site prior to the meeting. Items submitted at the meeting are subject to posting after the meeting.

Information about NAGPRA, the Review Committee, and Review Committee meetings is available on the National NAGPRA Program Web site, at *http://www.nps.gov/nagpra*. For the Review Committee's meeting procedures, click on ''Review Committee,'' then click on ''Procedures.'' Meeting minutes may be accessed by going to the Web site; then clicking on ''Review Committee;'' and then clicking on ''Meeting Minutes.'' Approximately fourteen weeks after each Review Committee meeting, the meeting transcript is posted for a limited time on the National NAGPRA Program Web site.

Notice is also given of a meeting via teleconference to be held on December 6, 2012, from 2 p.m. until approximately 4 p.m. EST, for the sole purpose of finalizing the Review Committee Report to Congress, should the item not be resolved by November 29, 2012. This meeting will be open to the public. Those who desire to attend the meeting should contact *NAGPRA@rap.midco.net*, between November 30 and December 4, 2012, to be provided the telephone access number for the meeting. A transcript and minutes of the meeting will also appear on the National NAGPRA Program Web site: *http://www.nps.gov/nagpra*. An updated agenda will post to the Web site November 30, 2012.

The Review Committee was established in Section 8 of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3006. Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters affecting such tribes or organizations lying within the scope of work of the Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is carried out during the course of meetings that are open to the public.

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: February 6, 2012.

Sherry Hutt,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 2012–3145 Filed 2–9–12; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–004]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 14, 2012 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–539–C (Third Review) (Uranium from Russia). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before February 24, 2012.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:
Issued: February 7, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–3238 Filed 2–8–12; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act (''CWA'')

Notice is hereby given that on February 6, 2012 a proposed Consent Decree (''Decree'') in *United States* v. *Union Pacific Railroad Company* (''UP''), Civil Action No. 1:12–cv–00284–REB was lodged with the United States District Court for the District of Colorado.

In this action the United States on behalf of the Environmental Protection Agency (''EPA'') filed a complaint against Union Pacific Railroad Company seeking permanent injunctive relief and civil penalties under the Clean Water Act (''CWA''), 33 U.S.C. 1251–1387, resulting from unauthorized discharge of oil and coal from railcars and locomotives it owned and operated in Colorado, Utah, and Wyoming into the waters of the United States or adjoining shorelines, the failure to comply with Spill Prevention, Control and Countermeasure (''SPCC'') and Facility Response Plan (''FRP'') regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j), at railyards it owns and operates in the Colorado, Utah and Wyoming, and the failure to comply with CWA storm water discharge permits for railyards it owns and operates in Utah.

The Decree requires that within sixty (60) days upon the Effective Date, the Defendant shall provide documentation to EPA demonstrating that the SPCC Plan deficiencies alleged in the Complaint have been corrected. It also requires Defendant to perform various compliance projects related to its SPCC violations at railyards in Colorado, Utah and Wyoming pursuant to an expeditious schedule. Defendant must also correct deficiencies in its FRP at the Rawlins, Wyoming railyard, and conduct monitoring at all railyards to ensure SPCC and FRP compliance. In addition, the Decree requires the Defendant to pay within thirty (30) days the sum of $1.5 million as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the court.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or emailed to *pubcomment-ees.enrd@usdoj.gov.* The comments should refer to *United States* v. *Union Pacific Railroad Company,* D.J. Ref. 90–5–1–1–09194.

During the public comment period, the Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decree.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or emailing a request to ''Consent Decree Copy'' *EESCDCopy.ENRD@USDOJ.gov,* fax number 202–514–0097, phone confirmation number: 202–514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $10.00 (.25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, please forward a check in that amount to the Consent Decree Library at the address given above.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–3092 Filed 2–9–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–09]

Scott W. Houghton, M.D.; Decision and Order

On November 4, 2011, Chief Administrative Law Judge (ALJ) John J. Mulrooney, II, issued the attached recommended decision. Neither party filed exceptions to the decision. Having reviewed the entire record, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BH8796077, issued to Scott W. Houghton, M.D., be, and it hereby is, revoked. I further order that any pending application of Scott W. Houghton, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

Dated: February 1, 2012.

Michele M. Leonhart,

Administrator.

Carrie Bland, Esq., for the Government.
R. Cornelius Danaher, Jr., Esq., for the Respondent.

Order Granting Summary Disposition and Recommended Decision

Chief Administrative Law Judge John J. Mulrooney, II. The Deputy Assistant Administrator, Drug Enforcement Administration (DEA or Government), issued an Order to Show Cause (OSC), dated September 27, 2011, proposing to revoke the DEA Certificate of Registration (COR), Number BH8796077, Scott W. Houghton, M.D. (Respondent), pursuant to 21 U.S.C. § 824(a)(3) and (4) (2006). In the OSC, the Government alleges that Respondent is ''currently without authority to handle controlled substances in the [s]tate of Connecticut,'' and that, as such, Respondent's continued registration is inconsistent with the public interest as that

[1] Based on the State's Immediate Suspension of Respondent's Connecticut Controlled Substances Registration, I conclude that the public interest requires that this Order be effective immediately. 21 CFR 1316.67.

term is used in 21 U.S.C. § 823(f) (2006 & Supp. III 2010).[1] OSC at 1.

On October 26, 2011, the Respondent, through counsel, timely filed a request for hearing coupled with a request for a continuance. An order issued that day which denied the Respondent's continuance request and set a briefing schedule on the issue of whether he possessed state authority to possess controlled substances. The parties timely complied. On October 28, 2011, the Government filed a document styled ''Government's Motion for Summary Disposition'' (Motion for Summary Disposition) and on November 4, 2011, the Respondent filed his reply (Respondent's Reply).

The Government's Motion for Summary Disposition attached a copy of a February 3, 2010 Order of Immediate Suspension of Controlled Substance Registration (Suspension Order) issued by the Commissioner of the Connecticut Department of Consumer Protection, as well as an August 13, 2011 Interim Consent Order, executed by the Respondent and an official of the Connecticut Department of Health, which memorialized the former's suspension and surrender of his state license to practice medicine. Both parties agree that the Respondent is currently without authorization to practice medicine and handle controlled substances in Connecticut, the jurisdiction where he holds the DEA COR that is the subject of this litigation. Although the Respondent does not contest the current status of his state license and lack of authorization to handle controlled substances, in his Reply, he has stresses his intention to contest these issues before the Connecticut authorities in the future. Reply at 2.

The Controlled Substances Act (CSA) requires that a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. § 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''); *see also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). Therefore, because ''possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration,'' this Agency has consistently held that ''the CSA requires the revocation of a registration issued to a practitioner who lacks [such authority].'' *Roy Chi Lung,* 74 FR 20346, 20347 (2009); *Scott Sandarg, D.M.D.,* 74 FR 17528, 174529 (2009); *John B. Freitas, D.O.,* 74 FR 17524, 17525 (2009); *Roger A. Rodriguez, M.D.,* 70 FR 33206, 33207 (2005); *Stephen J. Graham, M.D.,* 69 FR 11661 (2004); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Abraham A. Chaplan, M.D.,* 57 FR 55280 (1992); *Bobby Watts, M.D.,* 53 FR 11919 (1988); *see also Harrell E. Robinson,* 74 FR 61370, 61375 (2009).

In order to revoke a registrant's DEA registration, the DEA has the burden of proving that the requirements for revocation are satisfied. 21 C.F.R. § 1301.44(e). Once DEA has made its *prima facie* case for revocation of the registrant's DEA COR, the burden of production then shifts to the Respondent to show that, given the totality of the facts and circumstances in the record, revoking the registrant's registration would not be appropriate. *Morall v. DEA,* 412 F.3d 165, 174 (DC Cir. 2005); *Humphreys v. DEA,* 96 F.3d 658, 661 (3d Cir. 1996); *Shatz v. U.S. Dept. of Justice,* 873 F.2d 1089, 1091 (8th Cir. 1989); *Thomas E. Johnston,* 45 FR 72311 (1980).

Regarding the Government's motion, summary disposition of an administrative case is warranted where, as here, ''there is no factual dispute of substance.'' *See Veg-Mix, Inc.,* 832 F.2d 601, 607 (DC Cir. 1987) (''an agency may ordinarily dispense with a hearing when no genuine dispute exists''). A summary disposition would likewise be warranted even if the period of suspension were temporary, or if there were (as he avers) the potential that Respondent's state controlled substances privileges could be reinstated, because ''revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement,'' *Rodriguez,* 70 FR at 33207 (citations omitted), and even where there is a judicial challenge to the state medical board action actively pending in the state courts. *Michael G. Dolin, M.D.,* 65 FR 5661, 5662 (2000). It is well-settled that where no genuine question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, *see Jesus R. Juarez, M.D.,* 62 FR 14945 (1997); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993), under the rationale that Congress does not intend for administrative agencies to perform meaningless tasks. *See Philip E. Kirk, M.D.,* 48 FR 32887 (1983), *aff'd sub nom. Kirk v. Mullen,* 749 F.2d 297 (6th Cir. 1984); *see also Puerto Rico Aqueduct & Sewer Auth. v. EPA,* 35 F.3d 600, 605 (1st Cir. 1994); *NLRB v. Int'l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States v. Consol. Mines & Smelting Co.,* 455 F.2d 432, 453 (9th Cir. 1971).

At this juncture, no genuine dispute exists over the established material fact that Respondent currently lacks state authority to handle controlled substances. Because the Respondent lacks such state authority, both the plain language of applicable federal statutory provisions and Agency interpretive precedent dictate that the Respondent is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter adducible at a hearing that can provide me with authority to continue his entitlement to a COR under the circumstances. I therefore conclude that further delay in ruling on the Government's motion for summary disposition is not warranted. *See Gregory F. Saric, M.D.,* 76 FR 16821 (2011) (stay denied in the face of Respondent's petition based on pending state administrative action wherein he was seeking reinstatement of state privileges).

Accordingly, I hereby

GRANT the Government's Motion for Summary Disposition;

DENY the Government's Motion for Stay of Proceedings as moot;

and further **RECOMMEND** that the Respondent's DEA registration be **REVOKED** forthwith and any pending applications for renewal be **DENIED.**

Dated: November 4, 2011.

John J. Mulrooney, II,

Chief Administrative Law Judge.

[FR Doc. 2012–3057 Filed 2–9–12; 8:45 am]

BILLING CODE 4410–09–P

[1] Interestingly, lack of state authority is the only ground for which the Government's charging document has supplied a factual basis. Beyond the issue of state authority, no factual basis has been included that would provide the Respondent with notice as to why his continued registration might be inconsistent with the public interest.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Public Availability of the National Aeronautics and Space Administration FY 2011 Service Contract Inventory

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Public Availability of Analysis of the FY 2010 Service Contract Inventories and the FY 2011 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), National Aeronautics and Space Administration (NASA) is publishing this notice to advise the public of the availability of its analysis of FY 2010 Service Contract inventory and the FY 2011 Service Contract Inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on December 19, 2011 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). NASA has posted its analysis of the FY 2010 inventory, the FY 2011 inventory and a summary of the FY 2011 inventory on the NASA Office of Procurement homepage at the following link: *http://www.hq.nasa.gov/office/procurement/scinventory/index.html.*

Point of contact for this initiative is Sandra Morris (202) 358–0532, *Sandra.Morris@nasa.gov.*

William McNally,

Assistant Administrator for Procurement.

[FR Doc. 2012–3185 Filed 2–9–12; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public Availability of the National Archives and Records Administration FY 2011 Service Contract Inventory

AGENCY: National Archives and Records Administration.

ACTION: Notice of public availability of FY 2011 Service Contract Inventory.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the National Archives and Records Administration (NARA) is publishing this notice to advise the public of the availability of its FY 2011 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf*. NARA has posted its inventory and a summary of the inventory on the NARA homepage at the following link: *http://www.archives.gov/contracts/*.

FOR FURTHER INFORMATION CONTACT: Robert Singman, Deputy Director Acquisitions Division, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–0712. Email: *Robert.singman@nara.gov*.

Dated: February 3, 2012.

Charles K. Piercy,

Executive Business Support Services.

[FR Doc. 2012–3078 Filed 2–9–12; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating Unit No. 2; Exemption

1.0 Background

Entergy Nuclear Operations, Inc. (Entergy or the licensee) is the holder of Facility Operating License No. DPR–026, which authorizes operation of Indian Point Nuclear Generating Unit No. 2 (IP2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

IP2 is a pressurized-water reactor located approximately 24 miles north of the New York City boundary line on the east bank of the Hudson River in Westchester County, New York.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 50, Section 50.48(b), requires that nuclear power plants that were licensed to operate before January 1, 1979, satisfy the requirements of 10 CFR part 50, Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' Section III.G, ''Fire protection of safe shutdown capability.'' The circuit separation and protection requirements being addressed in this request for exemption are specified in Section III.G.2. Since IP2 was licensed to operate before January 1, 1979, IP2 is required to meet Section lll.G.2 of Appendix R to 10 CFR part 50.

The underlying purpose of Section III.G of Appendix R to 10 CFR part 50 is to establish reasonable assurance that safe shutdown (SSD) of the reactor can be achieved and maintained in the event of a postulated fire in any plant area. Circuits which could cause maloperation or prevent operation of redundant trains of equipment required to achieve and maintain hot shutdown conditions as a result of fire in a single fire area must be protected in accordance with lll.G.2. If conformance with the technical requirements of III.G.2 cannot be assured in a specific fire area, an alternative or dedicated shutdown capability must be provided in accordance with Section III.G.3, or an exemption obtained in accordance with 10 CFR 50.12, ''Specific exemptions.''

By letter dated March 6, 2009, Entergy requested an exemption from the requirements of 10 CFR part 50, Appendix R, in accordance with 10 CFR 50.12. Specifically, Entergy requested an exemption to allow the use of Operator Manual Actions (OMAs) in lieu of meeting certain technical requirements of III.G.2 in Fire Areas C, F, H, J, K, P, and YD of IP2. The table below provides the dates and topics of the submittals related to this request.

Subject	Author	Date	Description	ADAMS Accession
Exemption Request from Appendix R.	Entergy	March 6, 2009	Original Submittal	ML090770151.
Revised Exemption Request.	Entergy	October 1, 2009	Revision to March 2009 submittal, incorporated changes to Attachment 2, *Technical Basis in Support of Exemption Request*.	ML092810231
Request for Additional Information (RAI) #1.	NRC	January 20, 2010	Request for information on the overall defense-in-depth for each fire zone..	ML100150128
RAI Response #1	Entergy	May 4, 2010	Response to the staff's January 20, 2010, RAI.	ML101320230
RAI #2	NRC	August 11, 2010	RAI on reactor coolant system makeup, separation distances, *etc.*	ML102180331
RAI Response #2	Entergy	September 29, 2010	Response to the staff's August 11, 2010, RAI	ML102930237
RAI #3	NRC	December 16, 2010	RAI on reactor coolant system makeup	ML103500204
RAI Response #3	Entergy	January 19, 2011	Responses to the staff's December 16, 2010, RAI.	ML110310013
Letter to revise previously submitted information.	Entergy	February 10, 2011	Letter updating tables contained in previous submittals.	ML110540321

Subject	Author	Date	Description	ADAMS Accession
Letter to revise previously submitted information.	Entergy	May 26, 2011	Letter updating tables contained in previous submittals.	ML11158A197

III.G.2 establishes various protection options for providing reasonable assurance that at least one train of systems, equipment, and cabling required to achieve and maintain hot shutdown conditions remains free of fire damage. In lieu of providing one of the means specified in the regulation, Entergy requests an exemption from lll.G.2 to allow the use of OMAs to achieve and maintain hot shutdown conditions in the event of fire in seven fire areas at IP2, Fire Areas C, F, H, J, K, P, and YD. The licensee further subdivides these fire areas into one or more fire zones for analysis purposes.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The licensee stated that special circumstances exist because the application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

In accordance with 10 CFR 50.48(b), nuclear power plants licensed to operate before January 1, 1979, are required to meet Section III.G, of 10 CFR part 50, Appendix R. The underlying purpose of Section III.G of 10 CFR part 50, Appendix R, is to ensure that the ability to achieve and maintain SSD is preserved following a fire event. The regulation intends for licensees to accomplish this by extending the concept of defense-in-depth to:

- Prevent fires from starting.
- Rapidly detect, control, and extinguish promptly those fires that do occur.
- Provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the SSD of the plant.

Section III.G.2 requires one of the following means to ensure that a redundant train of SSD cables and equipment is free of fire damage, where redundant trains are located in the same fire area outside of primary containment:

a. Separation of cables and equipment by a fire barrier having a 3-hour rating;

b. Separation of cables and equipment by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and with fire detectors and an automatic fire suppression system installed in the fire area; or

c. Enclosure of cables and equipment of one redundant train in a fire barrier having a 1-hour rating and with fire detectors and an automatic fire suppression system installed in the fire area.

In its March 6, 2009, and October 1, 2009, submittals, Entergy requested an exemption from certain technical requirements of III.G.2 to the extent that one of the redundant trains of systems necessary to achieve and maintain hot shutdown is not maintained free of fire damage in accordance with one of the required means prescribed in III.G.2 in Fire Areas C, F, H, J, K, P, and YD. The licensee also listed an operator action to implement emergency operating procedure (EOP) 2–FR–H.1, ''Response To Loss Of Secondary Heat Sink.'' The NRC does not consider implementing 2–FR–H.1 an OMA, as actions to establish reactor coolant system decay heat removal can be performed from the control room and there are redundant trains of equipment located outside of the fire area of fire origin.

Each OMA included in this review consists of a sequence of tasks that occur in various fire areas. The OMAs are initiated upon confirmation of a fire in a particular fire area, which the licensee has further subdivided into fire zones. Listed in the order of the fire area of fire origin, the OMAs included in this review are as follows:

OMA#	Area of fire origin	Area name	Operator manual actions
1	C	Auxiliary Boiler Feed Pump Room, Elevation 18′–6″ of the Auxiliary Feed Pump Building.	Implement EOP FR–H.I as directed by EOPs and status trees if necessary to establish alternate secondary heat sink. Action performed from the control room, so the NRC does not consider this an OMA.
2			Operate turbine-driven 22 auxiliary feedwater (AFW) pump upon reentry to the room following the initial hour of the fire scenario.
3			Open or check open 22 AFW pump steam supply isolation valves PCV–1310A and PCV–1310B.
4			Operate 22 AFW pump flow control valves FCV–405A (discharge to 21 steam generator (SG)), FCV–405B (discharge to 22 SG), FCV–405C (discharge to 23 SG), and/or FCV–405 to align AFW flow to selected steam generators.
5	F	Primary Auxiliary Building and Fan House	Open HCV–142 bypass valve 227 to align charging pump makeup path to the Reactor Coolant System (RCS).

OMA#	Area of fire origin	Area name	Operator manual actions
6			Align charging pump suction source to the Refueling Water Storage Tank (RWST).
7			Transfer instrument buses 23 and 23A to alternate power.
8	H	Vapor (Reactor) Containment Building	Fail open valves 204A (charging flow to Loop 2 hot leg) and 204B (charging flow to Loop 1 cold leg) to align charging pump makeup path to the RCS.
9			Activate or enable Alternate Safe Shutdown System pneumatic instruments (steam generator level, pressurizer pressure and level) at Fan House local control panel.
10			Enable Alternate Safe Shutdown System source-range channel and Loop 21 and 22 hot leg (T_h) and cold leg (T_c) temperature channels.
11	J	Unit 1 Control Room, Turbine Building, Superheater Building, Nuclear Service Building, Chemical Systems Building, Administration Building, Screenwell House, and Unit 2 Turbine Building.	Trip breakers 52/5A and 52–SAC on Bus 5A and 52/6A and 52/TAO at Bus 6A and remove control power fuses.
12			Transfer Instrument Buses 23 and 23A to emergency power source.
13			Align charging pump suction to RWST.
14	K	Auxiliary Feed Pump Building (not including the AFW Pump Room).	Operate transfer switch EDC5 and close supply breaker at substation 12FD3 to transfer 21 AFW Pump to Alternate Safe Shutdown System power source.
15			Open 21 AFW pump recirculation bypass valve BFD–77.
16	P	Component Cooling Water (CCW) Pump Room	Transfer 23 CCW pump to Alternate Safe Shutdown System power feed followed by breaker closure at 12FD3.
17			Start Appendix R Diesel Generator (ARDG) if normal power and offsite power are lost.
18	YD	Outdoor (Yard) Area	Open HCV–142 bypass valve 227 to align charging pump makeup path to RCS.

In their submittals, the licensee described elements of their fire protection program that provide their justification that the concept of defense-in-depth that is in place in the above fire areas is consistent with that intended by the regulation. The licensee utilizes various protective measures to accomplish the concept of defense-in-depth. Specifically, the licensee stated that the purpose of their request was to credit the use of OMAs, in conjunction with other defense-in-depth features, in lieu of the separation and protective measures required by III.G.2 for a fire in the fire areas identified above.

In their March 6, 2009, and October 1, 2009, submittals, the licensee provided an analysis that described how fire prevention is addressed for each of the fire areas for which the OMAs may be required because the separation requirements for equipment and electrical circuits required by III.G.2 are not met. Specifically, the licensee stated that noncombustible materials have been used to the maximum extent practicable and that the introduction of combustible materials into areas with safety-related equipment, including Fire Areas C, F, H, K, and P, is strictly controlled by administrative procedures. The administrative procedures govern the handling, storage, and limitations for use of ordinary combustible materials, combustible and flammable gases and liquids, and other combustible supplies. In addition, periodic fire prevention inspections are performed to assess compliance with Indian Point's programs for Control of Combustibles and Control of Ignition Sources. The licensee stated that the administrative controls are described in the IP2 Fire Protection Program (FPP), which is incorporated by reference into the Updated Final Safety Analysis Report.

The licensee stated that both thermoplastic and thermoset low-voltage power, control, and instrument cables are installed at IP2. Since the thermoplastic insulated cables were manufactured and installed prior to the issuance of IEEE–383, a standard for nuclear plant cables, they were not qualified to that standard. In its May 4, 2010 letter, the licensee stated that these cables are constructed with an asbestos glass braid outer jacket which provides protection from flame spread. In addition, the licensee stated that the results of various tests, as well as an actual fire event during plant construction, have demonstrated the ability of this type of thermoplastic insulated cables to minimize the growth and spread of cable fires. The licensee also stated that the likelihood of self-

ignited cable fires is minimized by appropriately sized electrical protection devices (*e.g.,* fuses and circuit breakers). The licensee stated that all cables installed after plant construction are thermoset cables which meet the IEEE–383 standard. The IEEE–383 standard includes fire-retardation characteristics.

All of the fire areas in the plant are comprised of one or more fire zones consisting of separate compartments or fire zone delineations based on spatial separation. In addition, the licensee stated that the localization of hazards and combustibles within each fire zone, combined with the spatial or physical barrier separation between zones, provides reasonable assurance that a fire that occurs within a particular zone will be confined to that zone. As such, the licensee provided a characterization of the defense-in-depth that is present in each of the fire zones containing multiple trains of SSD equipment. The licensee further stated that for each of the fire zones where OMAs are performed, the adequacy of non-rated fire barriers was evaluated to ensure that they can withstand the hazards associated with the area. Therefore, this review evaluates the defense-in-depth provided in each of the zones of concern.

In its submittals, the licensee provided a summary of plant-specific fire protection features provided for each fire zone identified in its request including an account of combustible loading (both fixed and transient), ignition sources, detection, suppression, administrative controls, and identified any additional fire protection features that may be unique to the fire zone, such as electrical raceway fire barriers. In its responses, the licensee stated that combustibles and sources of ignition are tightly controlled by administrative controls programs and that the areas included in this exemption are not shop areas so hot work activities (such as welding) are infrequent and appropriate administrative controls (*e.g.,* hot work permits, fire watch, and supervisory controls) are in place if hot work activities do occur. The licensee also stated that the original installation of the suppression and detection systems was accepted by the NRC staff in safety evaluation reports (SERs) dated January 31, 1979, and a supplement dated October 31, 1980, and that there are no code compliance items that present an adverse impact to the implementation of the requested OMAs. Within the fire zones of concern to its request, the licensee stated that fire-rated assemblies are only used and credited for intra-zone separation of redundant SSD equipment trains in part of Fire Area F (Fire Zone 7A) and part of Fire Area P (Fire Zone 1). The fire-rated assemblies consist of a Hemyc Electrical Raceway Fire Barrier System (ERFBS) and have been evaluated to ensure they are adequate for the hazards of the areas of installation.

Entergy stated that for each of the fire areas addressed in this evaluation, Post-Fire Safe Shutdown (PFSSD) is principally accomplished by remaining in the Central Control Room (CCR) and conducting a normal (non-alternative) shutdown. In all cases, the identified OMAs mitigate conditions where certain technical requirements of III.G.2 are not satisfied.

Entergy further stated that the OMAs required for achieving and maintaining hot shutdown conditions are feasible, reliable, and are not impacted by environmental conditions (radiation, lighting, temperature, humidity, smoke, toxic gas, noise, fire suppression discharge, *etc.*) associated with fires in III.G.2 areas. The feasibility and reliability of the requested OMAs are addressed in Section 4.0 of this evaluation.

NRC Staff Observations

In its May 4, 2010, response to RAI–07.1, the licensee stated that no credit was taken for immediate and proactive OMA response by plant operators upon the receipt of a fire detection alarm in any of the identified fire zones. Instead, the licensee stated that OMAs are initiated upon the detection of operating abnormalities or failures caused by a postulated fire event. In this same response, the licensee stated that they conducted exercises using the plant simulator to evaluate the feasibility of the OMAs where a fire condition or a spontaneous reactor trip caused by a fire was announced at the outset of the simulation followed by the failure of discrete components that are subject to impairment due to fire damage to cables or components resulting from a fire in the area of concern. For fires originating in fire zones lacking fire detection and/or automatic fire suppression systems, the NRC staff considers it improbable that the operators would properly indentify that the indications were the result of a fire instead of some other fault. In addition, the operators would be delayed in positively identifying the location of the fire based on these indirect and ambiguous indicators. Therefore, for some scenarios involving fire zones that lack fire detection systems, operators are unlikely to identify and respond to a fire event in a manner that prompts them to perform certain OMAs prior to a significant degradation of the plant's condition. This becomes especially relevant for OMAs that are required to be completed within a relatively short period of time, *e.g.,* within about 30 minutes, or have limited margins available to complete the required actions.

For OMAs that are required to be completed within a short period of time, the NRC staff evaluates if operators can reliably perform the OMA. In order to be able to perform OMAs reliably, it is important that operators are able to promptly implement any required action based on clear indications. Indirect indicators and diagnostic analysis would result in delayed action to initiate the appropriate OMAs and would impair their reliable completion. For example, loss of control or indication for a pump or other affected component could result from the power supply circuit breaker opening due to an electrical fault other than a fire, and the operator might delay taking actions for a fire while investigating other potential and more-likely causes. The NRC staff documented a position on procedures and training for such actions in Section 4.2.9 of NUREG–1852, ''Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire,'' which notes that the procedures for reactive actions should clearly describe the indications which prompt initiation of the actions. Therefore, where OMAs need to be performed within a short period of time, fire zones crediting those OMAs are expected to have more robust defense-in-depth and clear, direct procedures than fire zones that have a significant margin in their OMA performance times.

In the August 11, 2010 RAI–02.1 and RAI–06.1, and the December 16, 2010 RAI–01.1, the NRC staff requested that the licensee describe the spatial separation between redundant trains of equipment. However, the licensee's responses only provided information regarding the separation between ignition sources and safe shutdown equipment and no information regarding separation between redundant trains of equipment within the fire area. For example, in its September 29, 2010 response to RAI–06.1 the licensee stated that ''The cables serving valves 204A and 204B are routed within Containment (Fire Area H) in raceways which are not separated by 20 feet at all locations, nor are other separation measures as prescribed by III.G.2 (f) provided.'' During a clarification call with the licensee, the licensee did not provide any dimensional data on train separation. Without dimensional data on train separation, the staff has conservatively assumed that there is no

discernable separation between redundant trains of equipment.

In addition, the licensee noted that the introduction of combustible materials into most areas included in its request was limited via administrative procedures such as EN–DC–161, ''Control of Combustibles.'' The licensee stated that Fire Area J did not contain safety-related systems or components and was not addressed by this procedure. The NRC staff notes that the licensee requested OMAs for Fire Area J and that alternate shutdown equipment and several cables associated with normal safe-shutdown equipment are located in this area. The licensee stated that operator rounds are performed each shift in Fire Area J that would monitor the presence of combustibles that could present an unacceptable fire safety challenge. In addition, the licensee stated that procedures OAP–017, ''Plant Surveillance and Operator Rounds'' and EN–MA–132, ''Housekeeping,'' include guidance for monitoring general area cleanliness including monitoring for accumulations of combustibles. The NRC staff notes that the combustible material controls procedures for this fire area are not as robust as for safety-related areas, and therefore results in a reduction in the defense-in-depth for the impacted fire zones.

Specific Area or Zone Discussion

Each of the fire areas or zones included in this exemption is analyzed below with regard to how the concept of defense-in-depth is achieved for each area or zone and the role of the OMAs in the overall level of safety provided for each area or zone.

3.1 Fire Area C—Auxiliary Boiler Feed Pump Room, Elevation 18′–6″ of the Auxiliary Feed Pump Building (Fire Zone 23—Auxiliary Boiler Feed Pump (ABFP) Room, Elevation 18′–6″)

3.1.1 Fire Prevention

Fire Area C consists of a single room (the ABFP Room or the Auxiliary Feedwater (AFW) Pump Room) and is designated as Fire Zone 23. Note that the pumps which supply water to the steam generators following a reactor trip are generically known as AFW pumps, but at IP2 they are also called Auxiliary Boiler Feed Pumps. The licensee stated that the fire loading in this area is low and that fixed combustibles consist of fire retardant cable insulation. The licensee stated that small quantities of lube oil and Class A combustibles are present but those do not pose a credible challenge to components of concern located in the zone. The licensee also stated that the ignition sources in the area consist of cable runs, junction boxes, motors, pumps, and electrical panels.

3.1.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 23 does not have a fire suppression system installed but does have an area-wide, ionization smoke detection system installed, which would provide early notification of a fire and assist in a prompt fire brigade response. The licensee also stated that the detection system was designed and installed in accordance with National Fire Protection Association (NFPA) standard NFPA 72D, 1975 Edition.

3.1.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 23 has a ceiling height of approximately 14′–0″ and an approximate floor area of 1,210 square feet. This fire zone contains the three AFW pumps (21, 22, and 23) and their discharge valves used to supply water to the steam generators for reactor coolant system decay heat removal when the normal feedwater system is not available, such as following a reactor trip. The licensee stated that a radiant energy shield is installed between 21 AFW pump and 23 AFW pump and that the power cables for 23 AFW pump are wrapped in Hemyc fire barrier material rated for 30 minutes. The licensee stated that damage to the control or instrument cables in the overhead trays could present an immediate impact on redundant AFW trains. As discussed in section 3.0 above, the licensee did not identify any separation between credited and redundant trains of equipment.

3.1.4 OMAs Credited for a Fire in Fire Area C (Fire Zone 23)

3.1.4.1 OMA #1—Implement 2–FR–H.1 If Necessary to Establish Alternate Secondary Heat Sink

The licensee stated that for a worst case fire scenario, OMAs to restore AFW functionality would be implemented after a period of 1 hour following fire initiation. This time is provided to extinguish the fire and clear the smoke from the fire area. In the unlikely event that control and indication for all three AFW pumps is lost during the initial hour of a fire event, the licensee stated that Emergency Operating Procedure EOP 2–FR–H.1, ''Response to Loss of Secondary Heat Sink,'' can be implemented to provide the reactor coolant heat removal function using the normal feedwater system or feed-and-bleed cooling with safety injection pumps. Since actions to remove reactor coolant system decay heat can be performed from the CCR (no OMAs are required in the field), this action is included for completeness only. Since no exemption is being requested, this OMA is not part of this exemption. In a letter dated September 14, 1988, the licensee had described the use of EOP 2–FR–H.1 to the NRC, and by letter dated January 12, 1989, the NRC staff concluded that the licensee's clarifications to the fire protection program conformed with NRC fire protection guidelines and requirements and were acceptable, so the use of EOP 2–FR–H.1 is considered to already be part of the licensee's licensing basis.

3.1.4.2 OMA #2—Operate 22 AFW Pump (Turbine-Driven)

The licensee stated that all three AFW pumps are within this area and associated cables are routed in this area. According to the licensee, the cables of concern are typically routed in rigid steel conduits and located between 8.9 feet and 10.8 feet above the floor. The OMAs for this area are only needed if all three AFW pumps are affected by the fire. The licensee stated that the diagnostic indicator for this scenario would be a loss of control or indication for 22 AFW pump from the CCR or indication of decreasing level in all steam generators as viewed at recorders LR–417, 427, 437, and 447. In the event that this does occur, OMAs #2, #3, and #4 are available to operate 22 AFW Pump. OMA #2 will open PCV–1139 to admit steam, operate HCV–1118 at the pump to control speed, and operate PCV–1213 as necessary to regulate pump bearing cooling water. Since these actions are required to be performed in the zone where the fire occurs, a 60-minute waiting period prior to operator reentry into the area is described in the submittal. The licensee stated that they allotted 60 minutes before performing OMA #2 to allow the fire brigade to perform its fire fighting operations and for the area to be made tenable prior to entering to perform certain OMAs. In Table RAI–08.1–1 of its February 10, 2011 submittal, the licensee indicated that the OMA initiator (postulated fire-induced failure) is located in Fire Zone 23 as is the OMA performance location. The licensee also provided a comment in the same table establishing the 60-minute duration of the waiting period.

If OMA #2 becomes necessary, the licensee stated that they have assumed a 60-minute period before re-entering the fire area, a 4.5-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period,

and that the required time to perform the action is 22 minutes, which results in a total required time of 82 minutes. The licensee is crediting the use of EOP 2–FR–H.1 until OMAs #2, #3, and #4 can be accomplished. Since there is defense-in-depth including full area fire detection and limited combustibles, and EOP 2–FR–H.1 can be used to perform the reactor coolant system heat removal function while OMA #2 is being implemented, the NRC staff finds this OMA acceptable.

3.1.4.3 OMA #3—Open or Check Open 22 AFW Pump Steam Supply Isolation Valves

This OMA is one of the three OMAs needed to operate the 22 AFW pump, as described in the previous section. OMA #3 would open the 22 AFW pump steam supply pressure control valves PCV–1310A and PCV–1310B in Fire Area K.

If OMA #3 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period, and that the required time to perform the action is 15 minutes, which results in a total required time of 19.5 minutes. The licensee is crediting the use of EOP 2–FR–H.1 until OMAs #2, #3, and #4 can be accomplished. Since there is defense-in-depth including full area fire detection and limited combustibles, and EOP 2–FR–H.1 can be used to perform the reactor coolant system heat removal function while OMA #3 is being implemented, the NRC staff finds this OMA acceptable.

3.1.4.4 OMA #4—Operate 22 AFW Pump Flow Control Valves To Align AFW Flow to Selected Steam Generators

This OMA is one of the three OMAs needed to operate the 22 AFW pump, as described in the previous sections. OMA #4 would operate FCV–405A (discharge to 21 SG) and FCV–405B (discharge to 22 SG) in the AFW Pump Room, upon reentry to the room following the initial 60-minute waiting period.

If OMA #4 becomes necessary, the licensee stated that they have assumed a 60-minute period before re-entering the fire area, a 4.5-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period, and that the required time to perform the action is 22 minutes, which results in a total required time of 82 minutes. The licensee is crediting the use of EOP 2–FR–H.1 until OMAs #2, #3, and #4 can be accomplished. Since there is defense-in-depth including full area fire detection and limited combustibles, and EOP 2–FR–H.1 can be used to perform the reactor coolant system heat removal function while OMA #4 is being implemented, the NRC staff finds this OMA acceptable.

3.1.5 Conclusion for Fire Area C (Fire Zone 23)

The NRC staff had previously issued an exemption from III.G.2 for Fire Zone 23 in 1984 (ML003776266). In that exemption, the NRC staff found that the low fire load and features such as fire wrap on the 23 AFW pump cables justified an exemption. By letter dated January 12, 1989, the NRC staff concluded that the licensee's clarifications to the fire protection program, which in part described the use of EOP 2–FR–H.1, conform with NRC fire protection guidelines and requirements and were acceptable. The NRC staff notes that the fire detection in this fire zone will clearly alert the operators to take actions for a fire. Therefore, the NRC staff concludes that with the defense-in-depth including full area fire detection and limited combustibles, OMAs #2, #3, and #4, along with EOP 2–FR–H.1, are acceptable for maintaining the reactor coolant system heat removal function and that the III.G.2 exemption for Fire Zone 23 remains valid.

3.2 Fire Area F—Primary Auxiliary Building and Fan House (Fire Zone 5A—Sampling Room, Elevation 80′–0″)

3.2.1 Fire Prevention

The licensee stated that the fire loading in this fire zone is moderate and that the fixed combustibles are primarily cable insulation. The licensee also stated that the ignition sources in the fire zone consists of cable runs, junction boxes, and electrical panels.

3.2.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 5A does not have fire detection or fire suppression systems installed.

3.2.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 5A has a ceiling height of approximately 14′–0″ and an approximate floor area of 150 square feet. This fire zone contains cables which could affect the position of valves LCV–112B and LCV–112C. These valves provide water to the suction of the charging pumps. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment.

3.2.4 OMAs Credited for a Fire in Fire Area F (Fire Zone 5A)

3.2.4.1 OMA #6—Align Charging Pump Suction to Refueling Water Storage Tank (RWST)

The licensee stated that a postulated fire in Fire Area F could present the potential for immediate damage to the one charging pump (there are three charging pumps) that is normally in service during power operations by affecting the source of water to the suction of the pump. The licensee stated that the 21 Charging Pump is credited for accomplishing the RCS makeup function in the event of fire in Fire Area F. In the event that the 21 Charging Pump is in operation during a fire in Fire Area F, and fire damage causes valve LCV–112C to spuriously close, the 21 Charging Pump could be damaged due to a loss of suction. For a fire in Fire Area F, the licensee stated that alignment of the charging suction flowpath to the RWST is established by OMAs to close valve LCV–112C and open normally closed manual valve 288, which provides a bypass path around valve LCV–112B. To open valve 288, the licensee stated that operators must reenter Fire Area F following a fire.

If a fire were to occur in Fire Zone 5A and cause LCV–112C to spuriously close, the licensee stated that OMA #6 is available to restore or maintain the necessary function (RCS makeup) to the affected equipment (Charging Pumps) and align charging pump suction to the RWST by closing the volume control tank (VCT) outlet valve LCV–112C and opening RWST manual bypass valve 288. If OMA #6 becomes necessary, the licensee stated that they have assumed a 60-minute waiting period before re-entering the fire area, a 14-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period, and that the required time to perform the action is 18 minutes, which results in a total required time of 78 minutes, while the time available to restore makeup flow to the RCS is 75 minutes. Therefore, there is insufficient margin available to perform the OMA for all fire zones in Fire Area F.

3.2.5 Conclusion for Fire Area F (Fire Zone 5A)

Since the licensee described postulated fire scenarios and Fire Zone 5A lacks an automatic fire detection or automatic suppression system, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment

remains free of fire damage or allow reentry to the area to perform OMAs. Additionally, OMA #6 cannot be completed in a timely manner for any fire in Fire Area F. Thus, OMA #6 does not provide assurance that safe shutdown capability will be maintained following the postulated fire events. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 5A and that an exemption from III.G.2 based on OMA #6 cannot be granted for Fire Zone 5A.

3.3 Fire Area F—Primary Auxiliary Building and Fan House (Fire Zone 6–22 Charging Pump Room, Elevation 80′–0″)

3.3.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation, lube oil, and plastic. Transient combustibles consist of trash, paint, lube oil, and radiation boundaries. The licensee also stated that the ignition source in the area is the 22 charging pump motor.

3.3.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 6 has an automatic fire detection system installed but does not have an automatic fire suppression system installed. The licensee also stated that the detection system was designed and installed in accordance with NFPA 72D, 1975 Edition.

3.3.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 6 has a ceiling height of approximately 15′–6″ and an approximate floor area of 282 square feet. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment. The licensee stated that cable YZ1–JB5 associated with valve LCV–112C and cables PL2–M41 and PL2–M42 associated with instrument buses 23 and 23A are located in this area and that they are located 12 feet, 6.8 feet, and 15.6 feet, respectively, from the primary ignition source in the zone, the 22 charging pump motor.

3.3.4 OMAs Credited for a Fire in Fire Area F (Fire Zone 6)

3.3.4.1 OMA #6—Align charging pump suction to RWST

OMA #6 was evaluated in Sections 3.2.4.1 and 3.2.5 above. As stated in Section 3.2.4.1, there is insufficient margin to perform OMA #6 for any fire zone in Fire Area F.

3.3.4.2 OMA #7—Transfer Instrument Buses 23 and 23A to Alternate Power

The licensee stated that if indication of instrument buses 23 and 23A is lost in the CCR, OMA #7 may be necessary to transfer both buses to their alternate power supply. If OMA #7 becomes necessary, the licensee stated that they have assumed a 5.5-minute diagnosis period and that the required time to perform the action is 2 minutes, while the time available is 30 minutes, which results in 22.5 minutes of margin.

3.3.5 Conclusion for Fire Area F (Fire Zone 6)

Since the licensee described postulated fire scenarios and Fire Zone 6 lacks an automatic fire suppression system and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage or allow reentry to the area to perform OMAs. The NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 6. OMA #6 was found to be unacceptable for this fire zone. OMA #7 has insufficient time available considering the lack of fire suppression and therefore is unacceptable for this fire zone. Therefore, the staff finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 6.

3.4 Fire Area F—Primary Auxiliary Building and Fan House (Fire Zone 7A—Corridor, Elevation 80′–0″)

3.4.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles are cable insulation and electrical cabinets, and that transient combustibles consist of trash, flammable liquids, plastic, cellulose, and radiation boundaries. The licensee also stated that the ignition sources in the area consist of cable insulation, junction boxes, and electrical panels.

3.4.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 7A has an automatic fire detection system installed but does not have an automatic fire suppression system installed. The licensee also stated that the detection system was designed and installed in accordance with NFPA 72D, 1975 Edition.

3.4.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 7A has a ceiling height of approximately 16′–0″ and an approximate floor area of 6,000 square feet. The licensee also stated that the power cable from transfer switch EDF–9 to 23 component cooling water CCW pump motor is wrapped with Hemyc fire barrier material rated for 30 minutes. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment. The licensee stated that cable YZ1–JB5 associated with valve LCV–112C and cables PL2–M41 and PL2–M42 associated with instrument buses 23 and 23A are located in this area.

3.4.4 OMAs Credited for a Fire in Fire Area F (Fire Zone 7A)

3.4.4.1 OMA #6—Align Charging Pump Suction to RWST

OMA #6 was evaluated in Sections 3.2.4.1 and 3.2.5 above. As stated in Section 3.2.4.1, there is insufficient margin to perform OMA #6 for any fire zone in Fire Area F.

3.4.4.2 OMA #7—Transfer Instrument Buses 23 and 23A to Alternate Power

The licensee stated that if indication of instrument buses 23 and 23A is lost in the CCR, OMA #7 may be necessary to transfer both buses to their alternate power supply. If OMA #7 becomes necessary, the licensee stated that they have assumed a 5.5-minute diagnosis period and that the required time to perform the action is 2 minutes, while the time available is 30 minutes, which results in 22.5 minutes of margin.

3.4.5 Conclusion for Fire Area F (Fire Zone 7A)

Since the licensee described postulated fire scenarios and Fire Zone 7A lacks an automatic fire suppression system and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage or allow reentry to the area to perform OMAs. The NRC staff finds that the defense-in-depth is insufficient demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 7A. OMA #6 was found to be unacceptable for this fire zone. OMA #7 has insufficient time available considering the lack of fire suppression and therefore is unacceptable for this fire zone. Therefore, the staff finds that

an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 7A.

3.5 Fire Area F—Primary Auxiliary Building and Fan House (Fire Zone 22A—Valve Corridor, Elevation 98′–0″)

3.5.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that there are no fixed or transient combustibles in this zone, except for small amounts of cable insulation. The licensee also stated that the ignition sources in the area consist of electrical cabinets.

3.5.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 22A does not have an automatic fire detection or automatic suppression system installed.

3.5.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 22A has a ceiling height of approximately 14′–0″ and an approximate floor area of 115 square feet. The licensee stated that if cables for LCV–112C are affected, it may be necessary to align an alternate water supply to the charging pump suction. The licensee stated that cables associated with valves LCV–112C and LCV–112B are located in Fire Zone 22A.

3.5.4 OMAs Credited for a Fire in Fire Area F (Fire Zone 22A)

3.5.4.1 OMA #6—Align charging pump suction to RWST

OMA #6 was evaluated in Sections 3.2.4.1 and 3.2.5 above. As stated in Section 3.2.4.1, there is insufficient margin to perform OMA #6 for any fire zone in Fire Area F.

3.5.5 Conclusion for Fire Area F (Fire Zone 22A)

Since the licensee described postulated fire scenarios and Fire Zone 22A lacks any automatic fire detection or automatic suppression system, it is possible that a fire would not be extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage or allow reentry to the area to perform OMAs. Additionally, there is insufficient margin available for the OMA credited in this area to provide assurance that safe shutdown capability will be maintained following the postulated fire events. Therefore, the staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 22A and that an exemption from III.G.2 based on OMA #6 cannot be granted for Fire Zone 22A.

3.6 Fire Area F—Primary Auxiliary Building and Fan House (Fire Zone 27A—Corridor, Elevation 98′–0″)

3.6.1 Fire Prevention

The licensee stated that the fire loading in this area is moderate and that the fixed combustibles in this zone consist of cable insulation, vinyl covers, control cabinets and panels, plastic, and office supplies and that transient combustibles consist of trash, rubber, paint, and radiation boundaries. The licensee also stated that the ignition sources in the area consist of cable, junction boxes, dry transformers, motor control center (MCC) vertical panels, and electrical panels.

3.6.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 27A has an automatic fire detection system installed but does not have an automatic fire suppression system installed. The licensee also stated that the detection system was designed and installed in accordance with NFPA 72D, 1975 Edition.

3.6.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 27A has a ceiling height of approximately 15′–0″ and an approximate floor area of 5,450 square feet. The licensee stated that cables associated with valves LCV–112C, LCV–112B, HCV–142 and 227 are also located in this fire zone. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment.

3.6.4 OMAs Credited for a Fire in Fire Area F (Fire Zone 27A)

3.6.4.1 OMA #5—Align Charging Pump Makeup Path to RCS

The licensee stated that in order to ensure a reliable charging makeup path to the reactor coolant system (RCS), air-operated valve HCV–142 must remain open or bypass valve 227, which is normally motor-operated and normally closed, must be opened. The licensee stated that air-operated valve HCV–142 is assumed to fail closed as designed in response to a loss of instrument air. The licensee stated that if HCV–142 were to close in response to a loss of instrument air, and cables for valve 227 are damaged in a manner that causes normally closed motor-operated valve 227 to remain closed and unable to be opened remotely from the CCR, OMA #5 would be used to locally open bypass valve 227 in Fire Area A to restore or maintain a reliable charging pump flow path to the RCS.

If OMA #5 becomes necessary, the licensee stated that they have assumed a 60-minute waiting period before re-entering the fire area, a 14-minute diagnosis period, which is assumed to transpire during the 60-minute waiting period, and that the required time to perform the action is 14 minutes, which provides a total required time of 74 minutes while the time available is 75 minutes, which provides 1 minute of margin. Although there is fire detection in this zone, the NRC staff finds that 1 minute of margin is insufficient to ensure the OMA can be accomplished reliably. Therefore, the NRC staff finds that OMA #5 is unacceptable for a fire which initiates in Fire Zone 27A or for any fire zone in Fire Area F.

3.6.4.2 OMA #6—Align Charging Pump Suction to RWST

OMA #6 was evaluated in Sections 3.2.4.1 and 3.2.5 above. As stated in Section 3.2.4.1, there is insufficient margin to perform OMA #6 for any fire zone in Fire Area F.

3.6.5 Conclusion for Fire Area F (Fire Zone 27A)

Since the licensee described postulated fire scenarios and Fire Zone 27A lacks an automatic fire suppression system and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage or allow reentry to the area to perform OMAs. Also, the NRC staff finds that OMAs #5 and #6 are unacceptable for a fire which initiates in Fire Zone 27A or for any fire zone in Fire Area F. Therefore, the staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 27A and that an exemption from III.G.2 based on OMA #5 and #6 cannot be granted for Fire Zone 27A.

3.7 Fire Area F—Primary Auxiliary Building and Fan House (Fire Zone 33A—MCC 26AA and MCC 26BB Room, Elevation 98′–0″)

3.7.1 Fire Prevention

The licensee stated that the fire loading in this area is moderate and that the fixed combustibles in this zone consist of cable insulation and electrical panels and that transient combustibles consist of trash, paint, and radiation

boundaries. The licensee also stated that the ignition sources in the area consist of cables, junction boxes, dry transformers, MCC vertical panels, and electrical cabinets.

3.7.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 33A does not have an automatic fire detection or automatic suppression system installed.

3.7.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 33A has an approximate floor area of 1,122 square feet and is open to Fire Zone 27A above. The licensee stated that cables associated with charging pump makeup valves HCV–142 and 227 are located in this fire zone. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment.

3.7.4 OMAs Credited for a Fire in Fire Area F (Fire Zone 33A)

3.7.4.1 OMA #5—Align Charging Pump Makeup Path to RCS

OMA #5 was evaluated in Section 3.6.4.1 above. As stated in Section 3.6.4.1, 1 minute of margin for OMA #5 is too low to credit OMA #5 as being a reliable method of restoring the charging pump flow path to the RCS for any fire zone in Fire Area F.

3.7.5 Conclusion for Fire Area F (Fire Zone 33A)

Since the licensee described postulated fire scenarios and Fire Zone 33A lacks an automatic fire detection system or automatic suppression system, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage or allow reentry to the area to perform OMAs. There is insufficient margin available for OMA #5 for any fire in Fire Area F to provide assurance that safe shutdown capability will be maintained following the postulated fire events. Therefore, the staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 33A and that an exemption from III.G.2 based on OMA #5 cannot be granted for Fire Zone 33A.

3.8 Fire Area F—Primary Auxiliary Building and Fan House (Fire Zone 59A—Fan House Elevation 72′–0″, 80′–0″, and 92′–0)

3.8.1 Fire Prevention

The licensee stated that the fire loading in this area is high and that the fixed combustibles in this zone consist of charcoal and cable insulation and that transient combustibles consist of trash, paint, and radiation boundaries. The licensee also stated that the ignition sources in the area consist of electrical cabinets.

3.8.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 59A has a partial automatic fire suppression system installed at the charcoal filter housings and a partial automatic fire detection system installed that consists of Thermistor wire for the charcoal filters and an ionization detector outside the charcoal filter enclosure on the 72′–0″ elevation. The licensee also stated that the detection system was designed and installed in accordance with NFPA 72D, 1967 Edition and the fire suppression system was designed and installed in accordance with NFPA 13, 1972 Edition and NFPA 15, 1969 Edition. The partial fire detection system may not be effective at detecting fires in other areas of this fire zone, as it is located on the lower level of the fire zone.

3.8.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 59A has an approximate floor area of 1,400 square feet and an approximate ceiling height of 29′–0″. Fire Zone 59A contains cable ECD3–EXF6/2, which is associated with motor-operated valve 227.

3.8.4 OMAs Credited for a Fire in Fire Area F (Fire Zone 59A)

3.8.4.1 OMA #5—Align Charging Pump Makeup Path to RCS

OMA #5 was evaluated in Section 3.6.4.1 above. As stated in Section 3.6.4.1, 1 minute of margin for OMA #5 is too low to credit OMA #5 as being a reliable method of restoring the charging pump flow path to the RCS for any fire zone in Fire Area F.

3.8.5 Conclusion for Fire Area F (Fire Zone 59A)

Since the licensee described postulated fire scenarios and Fire Zone 59A has a high combustible loading and lacks an automatic fire detection system or automatic suppression system throughout the zone, except where installed at the charcoal filters, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage or allow reentry to the area to perform OMAs. There is insufficient margin available for OMA #5 for any fire in Fire Area F to provide assurance that safe shutdown capability will be maintained following the postulated fire events. Therefore, the staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 59A and that an exemption from III.G.2 based on OMA #5 cannot be granted for Fire Zone 59A.

3.9 Fire Area H—Containment Building (Fire Zone 70A—23 and 24 Reactor Coolant Pump Area, Elevation 46–0″)

3.9.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles in this zone consist of cable insulation and reactor coolant pump (RCP) lube oil and that transient combustibles are administratively controlled. The licensee also stated that the ignition sources in the area consist of cables, junction boxes, and RCP motors.

3.9.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 70A has a partial automatic fire detection system installed that consists of ionization detectors located over RCPs 23 and 24 but does not have an automatic fire suppression system. The licensee also stated that the detection system was designed and installed in accordance with NFPA 72D, 1975 Edition.

3.9.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 70A has an approximate floor area of 3,320 square feet and an approximate ceiling height of 25′–8″. The licensee also stated that there is an oil collection system provided for RCPs 23 and 24. The licensee stated that cable Y15–H50 for valve 204B and cable Y17–H55 for valve 204A are located in this zone. Valve 204A is an air-operated valve which allows charging pump flow to an RCS hot leg. Valve 204B is an air-operated valve which allows charging pump flow to an RCS cold leg. The licensee stated that cables and components associated with redundant trains of normal instrumentation required to support normal safe

shutdown operations are located in this zone. The normal safe shutdown instrumentation potentially affected by fire includes:

- SG wide range level: LT–417D, LT–427D, LT–437D, LT–447D
- Pressurizer level: LT–459, LT–460, LT–461, LT–462
- Source-range neutron monitoring: N–31, N–32
- RCS loop hot and cold leg temperatures: TE–411 A/1, TE–413, TE–422A/1, TE–423, TE–431A/1, TE–433, TE–440A/1, TE–443

3.9.4 OMAs Credited for a Fire in Fire Area H (Fire Zone 70A)

3.9.4.1 OMA #8—Align Charging Pump Makeup Path to RCS

It is possible that a fire in this zone could result in a loss of a reliable charging makeup path to the RCS due to air-operated charging system valves 204A and 204B spuriously closing. The licensee stated that normal reactor coolant makeup to the RCS may be established via hot leg injection through valve 204A or cold leg injection through valve 204B and that in order to accomplish this, normal reactor coolant makeup air-operated charging system valves 204A and 204B would need to be failed open by de-energizing 125VDC control power in the CCR or by closing the air supply isolation valve IA–501, which is outside the containment building, to isolate instrument air.

Procedure 2–ONOP–FP–001 includes preemptive actions to establish the charging makeup path by failing open charging injection valves 204A and 204B. This is accomplished by removing DC control power to the valves by pulling the control power fuses in the CCR or tripping breakers 5 and 15 on 125 VDC DP 21 and 22, respectively. Procedure 2–AOP–SSD–1 includes actions to close the air supply isolation valve IA–501, and the loss of air pressure will cause valves 204A and 204B to fail open.

If a fire were to occur and causes valves 204A and 204B to remain closed, the licensee stated that OMA #8 is available to align the charging pump makeup path to the RCS. If OMA #8 becomes necessary, the licensee stated that they have assumed a 14-minute diagnosis period and that the required time to perform the action is 14 minutes, which results in a total required time of 28 minutes while the time available is 75 minutes, which provides 47 minutes of margin.

3.9.4.2 OMAs #9 and #10—Activate or Enable Alternate Safe Shutdown System Pneumatic Instruments and Enable Alternate Safe Shutdown System Source-Range Channel and Loop 21 and 22 hot and cold leg Temperature Channels

In the event that a fire in Fire Area H disables redundant trains of normal safe shutdown instrumentation identified in Section 3.9.3, the licensee may make use of OMAs performed in a different fire area to place in service Alternate Safe-Shutdown System instruments which have been separated from the normal shutdown instruments in accordance with III.G.2(f). The licensee also stated that in locations where normal and alternate shutdown instrument cables are separated by less than 20 feet, the cables of the alternate shutdown instruments are protected by a radiant energy shield as required to meet III.G.2(f). The Alternate Safe Shutdown System instrument channels include:

- RCP Loop 21 and 22 hot and cold leg temperature (TE–5139, TE–5140, TE–5141, TE–5142),
- SG 21 and 22 level (LT–5001, LT–5002),
- Pressurizer level (LT–3101), pressurizer pressure (PT–3105), and
- Source range neutron monitoring (NE–5143)

The licensee stated that cables associated with Loop 21 and 22 hot and cold leg temperature channels TE–5139, 5140, 5141, 5142, and source-range channel NE–5143 are routed into containment through penetration H20, and are protected with a radiant energy shield throughout the containment annulus area, where they are in proximity to cable trays or conduits containing the corresponding normal RCS loop temperature channels. The licensee also stated that there are no cables associated with the balance of the alternate SSD instruments (LT–5001, LT–5002, PT–3105, and LT- 3101), since these channels utilize pneumatically-operated transducers. The licensee stated that the Alternate Safe Shutdown System pneumatic instrumentation can be expected to remain operable despite fire-induced failure of the redundant electrically-operated instrumentation, since the Alternate Safe Shutdown System instruments do not utilize any electrical components or cables.

In addition, the licensee stated that all four RCPs are equipped with RCP lube oil collection systems which capture any leakage from credible leak sites and transport it to collection tanks located outside the bioshield wall in Fire Zone 77A.

In the event that redundant trains of normal shutdown instrumentation are damaged by a fire, OMAs #9 and #10 are available to activate the following Alternate Safe Shutdown System instruments:

- Pneumatic instruments
  - SG level (LT–5001, LT–5002),
  - Pressurizer pressure (PT–3105), and
  - Pressurizer level (LT–3101)
- Source-range channel (NE–5143), and
- Loop 21 and 22 hot leg (Th) and cold leg (Tc) temperature channels (TE–5139, TE–5140, TE–5141, TE–5142)

Procedure 2–AOP–SSD–1 includes actions to place these Alternate Safe Shutdown System instruments in service. If OMAs #9 and #10 become necessary, the licensee stated that they have assumed less than 1 minute for diagnosis, with the normal instruments assumed to be failed at the start of the event, and that the required time to perform the action is 13 minutes for the pneumatic instruments. The shortest timeline is to monitor level in the SGs, which could approach boil-dry conditions within 34 minutes. This results in 21 minutes of margin for the pneumatic instruments. The five electronic instruments are then energized by the same operator who made the pneumatic instruments operable, so it takes 24 minutes to put the electronic instruments in service. However, the electronic instrument readings are not needed until later in the scenario. This results in a total required time of 13 minutes while the time available is 34 minutes, which provides 21 minutes of margin.

3.9.5 Conclusion for Fire Area H (Fire Zone 70A)

Given the low combustible fuel loading, the oil collection system for the RCPs, automatic smoke detection system, large volume of the space, and preemptive nature of the OMAs, it is unlikely that a fire would occur and go undetected and not be extinguished in a reasonable amount of time to ensure that at least one train of equipment necessary for safe shutdown remains free of fire damage. In the unlikely event that a fire does occur and causes damage that necessitates OMAs #8, #9, and #10, the actions are clear and proceduralized with 47 minutes of margin for OMA #8 and 21 minutes of margin for OMAs #9 and #10, available to provide assurance that safe shutdown capability will be maintained following the postulated fire events. Therefore, the NRC staff finds that there is adequate defense-in-depth provided for Fire Zone 70A and that OMAs #8, #9, and #10 are acceptable for the purpose of providing the level of

protection intended by the regulation, and that an exemption from III.G.2 based on these OMAs is granted for Fire Zone 70A.

3.10 Fire Area H—Containment Building (Fire Zone 71A—21 and 22 Reactor Coolant Pump Area, Elevation 46′–0″)

3.10.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles in this zone consist of cable insulation, RCP lube oil, and other miscellaneous combustibles and that transient combustibles are administratively controlled. The licensee also stated that the ignition sources in the area consist of cables, junction boxes, RCP motors, and pumps.

3.10.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 71A has a partial automatic fire detection system installed that consists of ionization detectors located over RCPs 21 and 22 but does not have an automatic fire suppression system. The licensee also stated that the detection system was designed and installed in accordance with NFPA 72D, 1975 Edition.

3.10.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 71A has an approximate floor area of 3,320 square feet and an approximate ceiling height of 25′8″. The licensee also stated that there is an oil collection system provided for RCPs 21 and 22. The licensee stated that cable Y15–H50 for valve 204B and cable Y17–H55 for valve 204A are located in this zone. Valve 204A is an air-operated valve which allows charging pump flow to an RCS hot leg. Valve 204B is an air-operated valve which allows charging pump flow to an RCS cold leg. As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.10.4 OMAs Credited for a Fire in Fire Area H (Fire Zone 71A)

3.10.4.1 OMA #8—Align Charging Pump Makeup Path to RCS

As discussed in Section 3.9.4.1 above, if a fire were to occur and causes valves 204A and 204B to remain closed, the licensee stated that OMA #8 is available to align the charging pump makeup path to the RCS. If OMA #8 becomes necessary, the licensee stated that they have assumed a 14-minute diagnosis period and that the required time to perform the action is 14 minutes, which results in a total required time of 28 minutes while the time available is 75 minutes, which provides 47 minutes of margin.

3.10.5 Conclusion for Fire Area H (Fire Zone 71A)

Given the low combustible fuel loading, the oil collection system for the RCPs, automatic smoke detection system, large volume of the space, and preemptive nature of OMA #8, it is unlikely that a fire would occur and go undetected and not be extinguished in a reasonable amount of time to ensure that at least one train of equipment necessary for safe shutdown remains free of fire damage. In the unlikely event that a fire does occur and causes damage that necessitates OMA #8, the actions are clear and proceduralized with 47 minutes of margin available to provide assurance that safe shutdown capability will be maintained following the postulated fire events. Therefore, the NRC staff finds that there is adequate defense-in-depth provided for Fire Zone 71A and that OMA #8 is acceptable for the purpose of providing the level of protection intended by the regulation, and that an exemption from III.G.2 based on OMA #8 is granted for Fire Zone 71A.

3.11 Fire Area H—Containment Building (Fire Zone 72A—Outer Annulus, Elevation 46′0″)

3.11.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles in this zone consist of cable insulation and that transient combustibles are administratively controlled. The licensee also stated that the ignition sources in the area consist of cables.

3.11.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 72A does not have an automatic fire detection or automatic suppression system installed.

3.11.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 72A has an approximate floor area of 1,100 square feet and an approximate ceiling height of 22′0″. The licensee stated that cables for valve 204B and valve 204A are located in this zone. Valve 204A is an air-operated valve which allows charging pump flow to an RCS hot leg. Valve 204B is an air-operated valve which allows charging pump flow to an RCS cold leg. As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.11.4 OMAs Credited for a Fire in Fire Area H (Fire Zone 72A)

3.11.4.1 OMA #8—Align Charging Pump Makeup Path to RCS

As stated in Section 3.9.4.1 above, if a fire were to occur and causes valves 204A and 204B to remain closed, the licensee stated that OMA #8 is available to align the charging pump makeup path to the RCS. If OMA #8 becomes necessary, the licensee stated that they have assumed a 14-minute diagnosis period and that the required time to perform the action is 14 minutes, which results in a total required time of 28 minutes while the time available is 75 minutes, which provides 47 minutes of margin.

3.11.5 Conclusion for Fire Area H (Fire Zone 72A)

Since the licensee described postulated fire scenarios and Fire Zone 72A lacks an automatic fire detection system or automatic suppression system, and any discernable separation between the credited and redundant equipment in the area, it is credible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 47 minutes of margin available for OMA #8, Fire Zone 72A still lacks adequate defense-in-depth. Therefore, the staff finds that Fire Zone 72A's defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved. As such, OMA #8 is unacceptable for the purpose of providing the level of protection intended by the regulation and an exemption from III.G.2 based on OMA #8 cannot be granted for Fire Zone 72A.

3.12 Fire Area H—Containment Building (Fire Zone 75A—Outer Annulus, Elevation 46′–0″)

3.12.1 Fire Prevention

The licensee stated that the fire loading in this area is moderate and that the fixed combustibles in this zone consist of cable insulation and that transient combustibles are administratively controlled. The licensee also stated that the ignition sources in the area consist of cables and junction boxes.

3.12.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 75A does not have an automatic fire

detection or automatic suppression system installed.

3.12.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 75A has an approximate floor area of 1,100 square feet and an approximate ceiling height of 22′–0″. The licensee also stated that the Alternate Safe Shutdown System instrumentation cabling is protected with a radiant energy shield. The licensee stated that cables and components associated with redundant trains of normal instrumentation required to support normal safe shutdown operations are located in this zone. The normal safe shutdown instrumentation potentially affected by fire in Fire Area H includes:

- SG wide range level: LT–417D, LT–427D, LT–437D, LT–447D
- Pressurizer level: LT–459, LT–460, LT–461, LT–462
- Source-range neutron monitoring: N–31, N–32
- RCS loop hot and cold leg temperatures: TE–411 A/1, TE–413, TE–422A/1, TE–423, TE–431A/1, TE–433, TE–440A/1, TE–443

The licensee stated that cable Y15–H50 for valve 204B and cable Y17–H55 for valve 204A are located in this zone. As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.12.4 OMAs Credited for a Fire in Fire Area H (Fire Zone 75A)

3.12.4.1 OMA #8—Align Charging Pump Makeup Path to RCS

As stated in Section 3.9.4.1 above, if a fire were to occur and causes valves 204A and 204B to remain closed, the licensee stated that OMA #8 is available to align the charging pump makeup path to the RCS. If OMA #8 becomes necessary, the licensee stated that they have assumed a 14-minute diagnosis period and that the required time to perform the action is 14 minutes, which results in a total required time of 28 minutes while the time available is 75 minutes, which provides 47 minutes of margin.

3.12.4.2 OMAs #9 and #10—Activate or Enable Alternate Safe Shutdown System Pneumatic Instruments and Enable Alternate Safe Shutdown System Source-Range Channel and Loop 21 and 22 Hot and Cold Leg Temperature Channels

As discussed in Section 3.9.4.2 above, in the event that a fire in Fire Area H disables redundant trains of normal safe shutdown instrumentation identified in Section 3.9.3, the licensee may make use of OMAs performed in a different fire area to place in service Alternate Safe Shutdown System instruments which have been separated from the normal shutdown instruments in accordance with III.G.2(f). The licensee also stated that in locations where normal and alternate shutdown instrument cables are separated by less than 20 feet, the cables of the alternate shutdown instruments are protected by a radiant energy shield as required to meet III.G.2(f).

If OMAs #9 and #10 become necessary, the licensee stated that they have assumed less than 1 minute for diagnosis, with the normal instruments assumed to be failed at the start of the event, and that the required time to perform the action is 13 minutes for the pneumatic instruments. The shortest timeline is to monitor level in the SGs, which could approach boil-dry conditions within 34 minutes. This results in 21 minutes of margin for the pneumatic instruments. The five electronic instruments are then energized by the same operator who made the pneumatic instruments operable, so it takes 24 minutes to put the electronic instruments in service. However, the electronic instrument readings are not needed until later in the scenario. This results in a total required time of 13 minutes while the time available is 34 minutes, which provides 21 minutes of margin.

3.12.5 Conclusion for Fire Area H (Fire Zone 75A)

Since the licensee described postulated fire scenarios and Fire Zone 75A has a moderate combustible fuel loading, lacks an automatic fire detection system or automatic suppression system, and any discernable separation between the credited and redundant equipment in the area, it is credible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 47 minutes of margin available for OMA #8 and 21 minutes of margin available for OMAs #9 and #10, Fire Zone 75A still lacks adequate defense-in-depth. Therefore, the staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 75A and that OMAs #8, #9, and #10 are unacceptable for the purpose of providing the level of protection intended by the regulation and that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 75A.

3.13 Fire Area H—Containment Building (Fire Zone 77A—Outer Annulus)

3.13.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles in this zone consist of cable insulation and that transient combustibles are administratively controlled. The licensee also stated that the ignition sources in the area consist of cables and junction boxes.

3.13.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 77A does not have an automatic fire detection or automatic suppression system installed.

3.13.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 77A has an approximate floor area of 950 square feet and an approximate ceiling height of 22′–0″. The licensee stated that cables and components associated with redundant trains of normal instrumentation required to support normal safe shutdown operations are located in this zone. The normal safe shutdown instrumentation potentially affected by fire in Fire Area H includes:

- SG wide range level: LT–417D, LT–427D, LT–437D, LT–447D
- Pressurizer level: LT–459, LT–460, LT–461, LT–462
- Source-range neutron monitoring: N–31, N–32
- RCS loop hot and cold leg temperatures: TE–411 A/1, TE–413, TE–422A/1, TE–423, TE–431A/1, TE–433, TE–440A/1, TE–443

The licensee stated that cable Y15–H50 for valve 204B and cable Y17–H55 for valve 204A are located in this zone. As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.13.4 OMAs Credited for a Fire in Fire Area H (Fire Zone 77A)

3.13.4.1 OMA #8—Align Charging Pump Makeup Path to RCS

As stated in Section 3.9.4.1 above, if a fire were to occur and causes valves 204A and 204B to remain closed, the licensee stated that OMA #8 is available to align the charging pump makeup path to the RCS. If OMA #8 becomes necessary, the licensee stated that they have assumed a 14-minute diagnosis period and that the required time to perform the action is 14 minutes, which results in a total required time of 28 minutes while the time available is 75

minutes, which provides 47 minutes of margin.

3.13.4.2 OMAs #9 and #10—Activate or Enable Alternate Safe Shutdown System Pneumatic Instruments and Enable Alternate Safe Shutdown System Source-Range Channel and Loop 21 and 22 Hot and Cold Leg Temperature Channels

As discussed in Section 3.9.4.2 above, in the event that a fire in Fire Area H disables redundant trains of normal safe shutdown instrumentation identified in Section 3.9.3, the licensee may make use of OMAs performed in a different fire area to place in service Alternate Safe-Shutdown System instruments which have been separated from the normal shutdown instruments in accordance with III.G.2(f). The licensee also stated that in locations where normal and alternate shutdown instrument cables are separated by less than 20 feet, the cables of the alternate shutdown instruments are protected by a radiant energy shield as required to meet III.G.2(f).

If OMAs #9 and #10 become necessary, the licensee stated that they have assumed less than 1 minute for diagnosis, with the normal instruments assumed to be failed at the start of the event, and that the required time to perform the action is 13 minutes for the pneumatic instruments. The shortest timeline is to monitor level in the SGs, which could approach boil-dry conditions within 34 minutes. This results in 21 minutes of margin for the pneumatic instruments. The five electronic instruments are then energized by the same operator who made the pneumatic instruments operable, so it takes 24 minutes to put the electronic instruments in service. However, the electronic instrument readings are not needed until later in the scenario. This results in a total required time of 13 minutes while the time available is 34 minutes, which provides 21 minutes of margin.

3.13.5 Conclusion for Fire Area H (Fire Zone 77A)

Since the licensee described postulated fire scenarios and Fire Zone 77A lacks an automatic fire detection or automatic suppression system, and any discernable separation between the credited and redundant equipment in the area, it is credible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 47 minutes of margin available for OMA #8 and 21 minutes of margin available for OMAs #9 and #10, Fire Zone 77A still lacks adequate defense-in-depth. Therefore, the staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 77A and that OMAs #8, #9, and #10 are unacceptable for the purpose of providing the level of protection intended by the regulation and that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 77A.

3.14 Fire Area H—Containment Building (Fire Zone 84A–22 Containment Fan Cooler Unit Area, Elevation 68′–0″)

3.14.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles in this zone consist of cable insulation and that transient combustibles are administratively controlled. The licensee also stated that the ignition sources in the area consist of cables.

3.14.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 84A does not have an automatic fire detection or automatic suppression system installed.

3.14.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 84A has an approximate floor area of 910 square feet and an approximate ceiling height of 27′–0″. The licensee stated that cable Y15–H50 for valve 204B and cable Y17–H55 for valve 204A are located in this zone. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment.

3.14.4 OMAs Credited for a Fire in Fire Area H (Fire Zone 84A)

3.14.4.1 OMA #8—Align Charging Pump Makeup Path to RCS

As stated in Section 3.9.4.1 above, if a fire were to occur and causes valves 204A and 204B to remain closed, the licensee stated that OMA #8 is available to align the charging pump makeup path to the RCS. If OMA #8 becomes necessary, the licensee stated that they have assumed a 14-minute diagnosis period and that the required time to perform the action is 14 minutes, which results in a total required time of 28 minutes while the time available is 75 minutes, which provides 47 minutes of margin.

3.14.5 Conclusion for Fire Area H (Fire Zone 84A)

Since the licensee described postulated fire scenarios and Fire Zone 84A lacks an automatic fire detection or automatic suppression system, and any discernable separation between the credited and redundant equipment in the area, it is credible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 47 minutes of margin available for OMA #8, Fire Zone 84A still lacks adequate defense-in-depth. Therefore, the staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 84A and that OMA #8 is unacceptable for the purpose of providing the level of protection intended by the regulation and that an exemption from III.G.2 based on this OMA cannot be granted for Fire Zone 84A.

3.15 Fire Area H—Containment Building (Fire Zone 85A—Incore Detector Drive Area, Elevation 68′–0″)

3.15.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles in this zone consist of cable insulation and that transient combustibles are administratively controlled.

3.15.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 85A does not have an automatic fire detection or automatic suppression system installed.

3.15.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 85A has an approximate floor area of 560 square feet and an approximate ceiling height of 27′–0″. The licensee stated that cable Y15–H50 for valve 204B and cable Y17–H55 for valve 204A are located in this zone. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment.

3.15.4 OMAs Credited for a Fire in Fire Area H (Fire Zone 85A)

3.15.4.1 OMA #8—Align Charging Pump Makeup Path to RCS

As stated in Section 3.9.4.1 above, if a fire were to occur and causes valves 204A and 204B to remain closed, the licensee stated that OMA #8 is available

to align the charging pump makeup path to the RCS. If OMA #8 becomes necessary, the licensee stated that they have assumed a 14-minute diagnosis period and that the required time to perform the action is 14 minutes, which results in a total required time of 28 minutes while the time available is 75 minutes, which provides 47 minutes of margin.

3.15.5 Conclusion for Fire Area H (Fire Zone 85A)

Since the licensee stated that a fire in this zone could result in a loss of a reliable charging makeup path to the RCS and Fire Zone 85A lacks an automatic fire detection or suppression system, and any discernable separation between the credited and redundant equipment in the area, it is credible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 47 minutes of margin available for OMA #8, Fire Zone 85A still lacks adequate defense-in-depth. Therefore, the staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 85A and that OMA #8 is unacceptable for the purpose of providing the level of protection intended by the regulation and that an exemption from III.G.2 based on this OMA cannot be granted for Fire Zone 85A.

3.16 Fire Area H—Containment Building (Fire Zone 87A—Outer Annulus, Elevation 46′–0″)

3.16.1 Fire Prevention

The licensee stated that the fire loading in this area is low and that the fixed combustibles in this zone consist of MCCs and instrument racks and that transient combustibles are administratively controlled. The licensee also stated that the ignition sources in the area consist of MCCs.

3.16.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 87A does not have an automatic fire detection or automatic suppression system installed.

3.16.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 87A has an approximate floor area of 434 square feet and an approximate ceiling height of 22′–0″, which is partially open to the containment dome at the 95′–0″ elevation. The licensee stated that cables and components associated with redundant trains of normal instrumentation required to support normal safe shutdown operations are located in this zone. The normal safe shutdown instrumentation potentially affected by fire in Fire Area H includes:

- SG wide range level: LT–417D, LT–427D, LT–437D, LT–447D
- Pressurizer level: LT–459, LT–460, LT–461, LT–462
- Source-range neutron monitoring: N–31, N–32
- RCS loop hot and cold leg temperatures: TE–411 A/1, TE–413, TE–422A/1, TE–423, TE–431A/1, TE–433, TE–440A/1, TE–443

The licensee stated that cable Y15–H50 for valve 204B and cable Y17–H55 for valve 204A are located in this zone. As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.16.4 OMAs Credited for a Fire in Fire Area H (Fire Zone 87A)

3.16.4.1 OMA #8—Align Charging Pump Makeup Path to RCS

As stated in Section 3.9.4.1 above, if a fire were to occur and causes valves 204A and 204B to remain closed, the licensee stated that OMA #8 is available to align the charging pump makeup path to the RCS. If OMA #8 becomes necessary, the licensee stated that they have assumed a 14-minute diagnosis period and that the required time to perform the action is 14 minutes, which results in a total required time of 28 minutes while the time available is 75 minutes, which provides 47 minutes of margin.

3.16.4.2 OMAs #9 and #10—Activate or Enable Alternate Safe Shutdown System Pneumatic Instruments and Enable Alternate Safe Shutdown System Source-Range Channel and Loop 21 and 22 Hot and Cold Leg Temperature Channels

As discussed in Section 3.9.4.2 above, in the event that a fire in Fire Area H disables redundant trains of normal safe shutdown instrumentation identified in Section 3.9.3, the licensee may make use of OMAs performed in a different fire area to place in service Alternate Safe Shutdown System instruments which have been separated from the normal shutdown instruments in accordance with III.G.2(f). The licensee also stated that in locations where normal and alternate shutdown instrument cables are separated by less than 20 feet, the cables of the alternate shutdown instruments are protected by a radiant energy shield as required to meet III.G.2(f).

If OMAs #9 and #10 become necessary, the licensee stated that they have assumed less than 1 minute for diagnosis, with the normal instruments assumed to be failed at the start of the event, and that the required time to perform the action is 13 minutes for the pneumatic instruments. The shortest timeline is to monitor level in the SGs, which could approach boil-dry conditions within 34 minutes. This results in 21 minutes of margin for the pneumatic instruments. The five electronic instruments are then energized by the same operator who made the pneumatic instruments operable, so it takes 24 minutes to put the electronic instruments in service. However, the electronic instrument readings are not needed until later in the scenario. This results in a total required time of 13 minutes while the time available is 34 minutes, which provides 21 minutes of margin.

3.16.5 Conclusion for Fire Area H (Fire Zone 87A)

Since the licensee described postulated fire scenarios and Fire Zone 87A lacks an automatic fire detection or suppression system, and any discernable separation between the credited and redundant equipment in the area, it is credible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 47 minutes of margin available for OMA #8 and 21 minutes of margin available for OMAs #9 and #10, Fire Zone 87A still lacks adequate defense-in-depth. Therefore, the staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 87A and that OMAs #8, #9, and #10 are unacceptable for the purpose of providing the level of protection intended by the regulation and that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 87A.

3.17 Fire Area J—Unit 1 Control Room, Turbine Building, Superheater Building, Nuclear Service Building, Chemical Systems Building, Administration Building, Screenwell House, and Unit 2 Turbine Building (Fire Zone 17—Turbine Oil Reservoir Area, Elevation 15′–0″ Unit 2 Turbine Building)

3.17.1 Fire Prevention

The licensee stated that the fire loading in this area is high and that the

fixed combustibles in this zone consist of lube oil, fuel oil, and welding leads and that transient combustibles consist of trash, cardboard, lube oil, fiberglass, rubber, wood, and plastic. The licensee also stated that the ignition sources in the area consist of electrical cabinets. The licensee further stated that since Fire Area J does not contain safety-related structures, systems or components, it is not subject to the explicit transient combustible controls of procedure EN–DC–161. However, operator rounds performed each shift provide for the monitoring of combustibles that could challenge fire safety. In addition, the licensee stated that procedures OAP–017, ''Plant Surveillance and Operator Rounds'' and EN–MA–132, ''Housekeeping'' include guidance for monitoring general area cleanliness as well as monitoring for accumulations of combustibles.

3.17.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 17 has an automatic thermal fire detection system installed throughout the zone and an automatic aqueous foaming foam spray system installed at the turbine lube oil reservoir. The licensee also stated that the detection system was designed and installed in accordance with NFPA 72D, 1967 Edition and the fire suppression system was designed and installed in accordance with NFPA 16, 1968 Edition.

3.17.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 17 has an approximate floor area of 968 square feet and an approximate ceiling height of 37′–0″. The licensee stated that cable JC2–YA9, which is associated with Buses 5A and 6A, is routed through Fire Zones 17, 47A, and 50A and that ignition sources in the zone located less than 20 feet horizontally from cable JC2–YA9 consists of electrical cabinets, motors, and MCCs. According to the licensee, the electrical cabinets are separated from the cable by approximately 3.8 feet horizontally and 1.9 feet vertically or greater and six motors are located above the cable routing separated from the cable by approximately 2.1 feet horizontally or greater. The licensee also stated that the turbine lube oil reservoir is located in Fire Zone 17. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment.

3.17.4 OMAs Credited for a Fire in Fire Area J (Fire Zone 17)

3.17.4.1 OMA #11—Trip Breakers 52/5A and 52–SAC on Bus 5A and 52/6A and 52/TAO at Bus 6A and Remove Control Power Fuses

The licensee stated that offsite power is the preferred lineup for supplying the 480V loads on Buses 2A, 3A, 5A, and 6A. In the event that offsite power is not available due to fire, the licensee stated that the Emergency Diesel Generators (EDGs) are credited to supply 480V loads on Buses 2A, 3A, 5A, and 6A. The licensee also stated that a fire in Fire Zone 17 which damages certain cables associated with 480V Buses 5A and/or 6A could prevent loading of Buses 5 and 6 from the EDGs, and thereby, result in a loss of 480V power from the affected bus(es). Since a fire in Fire Zone 17 may impact the availability of offsite power, the licensee stated that they assume offsite power is unavailable at the start of the fire event.

In the event that a fire occurs and damages the cables identified above, the licensee stated that OMA #11 is available to restore or maintain power by tripping breakers 52/5A and 52–SAC on Bus 5A and Breakers 52/6A and 52/TAO at Bus 6A in the 480V Switchgear Room (Fire Area A) and removing their control power fuses. The licensee stated that loss of power to the affected buses is detected by loss of indication in the CCR. Loss of power to Bus 5A or Bus 6A causes operators to immediately enter procedure 2–AOP–480V–1. The procedure directs operators to locally inspect the switchgear, at which time any remaining untripped breakers (*i.e.,* 52/5A, 52–SAC, 52/6A, 52/TAO) would be noted and locally tripped as necessary. If OMA #11 becomes necessary, the licensee stated that they have assumed that a loss of offsite power occurs at the beginning of the fire event and that the required time to perform the action is 10 minutes while the time available is 60 minutes, which provides 50 minutes of margin. The NRC staff finds that OMA #11 has acceptable margin for all fire zones in Fire Area J.

3.17.5 Conclusion for a Fire in Fire Area J (Fire Zone 17)

Given the fire detection system, automatic fire suppression system, and large volume of the space, it is unlikely that a fire would occur and go undetected and not be extinguished in a reasonable amount of time to ensure that at least one train of equipment necessary for safe shutdown remains free of fire damage. In the unlikely event that a fire does occur and causes damage that necessitates OMA #11, the action is clear and proceduralized with 50 minutes of margin available to provide assurance that safe shutdown capability will be maintained following the postulated fire events. Therefore, the NRC staff finds that there is adequate defense-in-depth provided for Fire Zone 17 and that OMA #11 is acceptable for the purpose of providing the level of protection intended by the regulation, and that an exemption from III.G.2 based on OMA #11 is granted for Fire Zone 17.

3.18 Fire Area J—Unit 1 Control Room, Turbine Building, Superheater Building, Nuclear Service Building, Chemical Systems Building, Administration Building, Screenwell House, and Unit 2 Turbine Building (Fire Zone 19—Station Air Compressor Area, Elevation 15′–0″ Unit 2 Turbine Building)

3.18.1 Fire Prevention

The licensee stated that the fire loading in this zone is low and that the primary fixed combustible in this zone is lube oil, which is contained in the turbine lube oil piping system, and that transient combustibles consist of trash, cleaning rags, lube oil, and paint. The licensee also stated that the ignition sources in the area consist of a motor, a compressor, and an electrical cabinet. The licensee further stated that since Fire Area J does not contain safety-related structures, systems or components, it is not subject to the explicit transient combustible controls of procedure EN–DC–161. However, operator rounds performed each shift provide for the monitoring of combustibles that could challenge fire safety. In addition, the licensee stated that procedures OAP–017, ''Plant Surveillance and Operator Rounds'' and EN–MA–132, ''Housekeeping'' include guidance for monitoring general area cleanliness as well as monitoring for accumulations of combustibles.

3.18.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 19 does not have a fire detection or automatic fire suppression system installed.

3.18.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 19 has an approximate floor area of 798 square feet and an approximate ceiling height of 21′–0″. The licensee stated that a fire in Fire Area J which damages certain cables associated with 480V Buses 5A and/or 6A could prevent loading of Buses 5A and 6A from the EDGs, and thereby, result in a loss of

480VAC power from the affected bus(es). According to the licensee, cables associated with Buses 5A and 6A are located in this fire zone. The licensee stated that cable AG5–XA5, which is associated with Bus 5A, is located in Fire Zone 19. The licensee also stated that the ignition sources in the zone located less than 20 feet horizontally from cable AG5–XA5 consist of seven electrical cabinets, a 150kVA dry transformer, three motors, and an MCC. According to the licensee, three electrical cabinets are located under the cable separated by approximately 3 feet vertically or greater, the remaining four electrical cabinets are separated from the cable by approximately 2 feet horizontally or greater, the 150 kVA dry transformer is separated from the cable by approximately 1.6 feet horizontally and 6.7 feet vertically, the motors are separated from the cable by approximately 4.6 feet horizontally or greater, and the MCC is separated from the cable by approximately 7.5 feet horizontally.

The licensee stated that cables PC9–XA5/1 and PC9–XA5/2, which are associated with Bus 5A, are routed between two junction boxes in Fire Zone 19 for approximately 2 feet. The licensee also stated that the ignition sources in the zones located less than 20 feet horizontally from the cable consist of three motors, which are all separated from the cables by approximately 4.6 feet horizontally or greater. The licensee also stated that cable XA5–WU9, associated with Bus 5A, is routed in Fire Zone 19 from east to west terminating at the Station Air Compressor. The licensee stated that the ignition sources in the zone located less than 20 feet horizontally from the cable consist of two motors, which are separated from the cable by approximately 4.6 feet horizontally or greater. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment.

3.18.4 OMAs Credited for a Fire in Fire Area J (Fire Zone 19)

3.18.4.1 OMA #11—Trip Breakers 52/5A and 52–SAC on bus 5A and 52/6A and 52/TAO at bus 6A and Remove Control Power Fuses.

OMA #11 was evaluated in Section 3.17.4.1 above. As stated in Section 3.17.4.1, OMA #11 has acceptable margin for all fire zones in Fire Area J.

3.18.5 Conclusion for Fire Area J (Fire Zone 19)

Since the licensee described postulated fire scenarios and Fire Zone 19 lacks an automatic fire detection or automatic fire suppression system, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 50 minutes of margin available for OMA #11, Fire Zone 19 still lacks adequate defense-in-depth. Therefore, the staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 19 and that OMA #11 is unacceptable for the purpose of providing the level of protection intended by the regulation. Therefore, the NRC staff finds that an exemption from III.G.2 based on this OMA cannot be granted for Fire Zone 19.

3.19 Fire Area J—Unit 1 Control Room, Turbine Building, Superheater Building, Nuclear Service Building, Chemical Systems Building, Administration Building, Screenwell House, and Unit 2 Turbine Building (Fire Zone 25—23 Battery Room, Elevation 33′–0″ of the Unit 1 Superheater Building)

3.19.1 Fire Prevention

The licensee stated that the fire loading in this zone is low and that the primary fixed combustibles in this zone are batteries and cable insulation and that transient combustibles are administratively controlled. The licensee also stated that the ignition sources in the area consist of batteries and electrical cabinets. The licensee further stated that since Fire Area J does not contain safety-related structures, systems or components, it is not subject to the explicit transient combustible controls of procedure EN–DC–161. However, operator rounds performed each shift provide for the monitoring of combustibles that could present an unacceptable fire safety challenge. In addition, the licensee stated that procedures OAP–017, ''Plant Surveillance and Operator Rounds'' and EN–MA–132, ''Housekeeping'' include guidance for monitoring general area cleanliness as well as monitoring for accumulations of combustibles.

3.19.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 25 does not have a fire detection or automatic fire suppression system installed.

3.19.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 25 has an approximate floor area of 92 square feet and an approximate ceiling height of 10′–0″. The licensee stated that cables EDB8–EPB3, EGA9–EDB8/4, and EGA9–EDB8/5 are routed through Fire Zone 25 in rigid steel conduit and that since cables EGA9–EDB8/4 and EGA9–EDB8/5 originate inside the battery room at the batteries, there is no separation between the cables and the batteries. The licensee also stated that ignition sources in the zone located less than 20 feet horizontally from cable EDB8–EPB3 consist of an MCC, a 45kVA dry transformer, and two electrical cabinets. According to the licensee, the MCC is separated from the cable by approximately 18.5 feet horizontally, the transformer is separated from the cable by approximately 13.6 feet horizontally, one electrical cabinet is separated from the cable by approximately 12.8 feet horizontally, and the second electrical cabinet is separated from the cable by approximately 5.5 feet horizontally. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment.

3.19.4 OMAs Credited for a Fire in Fire Area J (Fire Zone 25)

3.19.4.1 OMA #12—Transfer Instrument Buses 23 and 23A to Emergency Power Source

The licensee stated that instrument buses 23 and 23A could experience a loss of their normal power source (125 VDC power panel 23) as a result of fire in Fire Zone 25. If this were to occur, the licensee stated that OMA #12 is available to swap Instrument Buses 23 and 23A to their backup power source (MCC–29A). If OMA #12 becomes necessary, the licensee stated that they have assumed a 5.5-minute diagnosis period and that the required time to perform the action is 2 minutes while the time available is 30 minutes, which provides 22.5 minutes of margin.

3.19.5 Conclusion for Fire Area J (Fire Zone 25)

Since the licensee described postulated fire scenarios and Fire Zone 25 lacks an automatic fire detection or automatic fire suppression system, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure

that at least one train of equipment remains free of fire damage following a fire event. Although there is 22.5 minutes of margin available for OMA #12, Fire Zone 25 still lacks adequate defense-in-depth. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 25 and that OMA #12 is unacceptable for the purpose of providing the level of protection intended by the regulation. Therefore, the NRC staff finds that an exemption from III.G.2 based on OMA #12 cannot be granted for Fire Zone 25.

3.20 Fire Area J—Unit 1 Control Room, Turbine Building, Superheater Building, Nuclear Service Building, Chemical Systems Building, Administration Building, Screenwell House, and Unit 2 Turbine Building (Fire Zone 39A—Mezzanine Floor, Elevation 36′–9″ Unit 2 Turbine Building)

3.20.1 Fire Prevention

The licensee stated that the fire loading in this zone is moderate and that the fixed combustibles in this zone consist of cable insulation, plastic, and cellulose and that transient combustibles in this zone consist of trash, wood, and lube oil. The licensee also stated that the ignition sources in this zone consist of cables, junction boxes, electrical cabinets, and motors. The licensee further stated that since Fire Area J does not contain safety-related structures, systems or components, it is not subject to the explicit transient combustible controls of procedure EN–DC–161. However, operator rounds performed each shift provide for the monitoring of combustibles that could present an unacceptable fire safety challenge. In addition, the licensee stated that procedures OAP–017 (Plant Surveillance and Operator Rounds) and EN–MA–132 (Housekeeping) include guidance for monitoring general area cleanliness as well as monitoring for accumulations of combustibles.

3.20.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 39A does not have a fire detection or automatic fire suppression system installed.

3.20.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 39A has an approximate floor area of 7,592 square feet and an approximate ceiling height of 16′–0″. The licensee stated that cable AG5–XA5, which is associated with instrument buses 23 and 23A and buses 5A and 6A, is located in Fire Zone 39A. The licensee also stated that the ignition sources in the zone located less than 20 feet horizontally from cable AG5–XA5 consist of seven electrical cabinets, a 150 kVA dry transformer, three motors, and an MCC. According to the licensee, three electrical cabinets are located under the cable separated by approximately 3 feet vertically or greater, the remaining four electrical cabinets are separated from the cable by approximately 2 feet horizontally or greater, the 150 kVA dry transformer is separated from the cable by approximately 1.6 feet horizontally and 6.7 feet vertically, the motors are separated from the cable by approximately 4.6 feet horizontally or greater, and the MCC is separated from the cable by approximately 7.5 feet horizontally. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment.

3.20.4 OMAs Credited for a Fire in Fire Area J (Fire Zone 39A)

3.20.4.1 OMA #11—Trip breakers 52/5A and 52–SAC on bus 5A and 52/6A and 52/TAO at bus 6A and Remove Control Power Fuses

OMA #11 was evaluated in Section 3.17.4.1 above. As stated in Section 3.17.4.1, OMA #11 has acceptable margin for all fire zones in Fire Area J.

3.20.4.2 OMA #12—Transfer Instrument Buses 23 and 23A to Emergency Power Source

The licensee stated that instrument buses 23 and 23A could experience a loss of their normal power source (125 VDC power panel 23) as a result of fire in Fire Zone 39A. If this were to occur, the licensee stated that OMA #12 is available to swap Instrument Buses 23 and 23A to their backup power source (MCC–29A). If OMA #12 becomes necessary, the licensee stated that they have assumed a 5.5-minute diagnosis period and that the required time to perform the action is 2 minutes while the time available is 30 minutes, which provides 22.5 minutes of margin.

3.20.5 Conclusion for Fire Area J (Fire Zone 39A)

Since the licensee described postulated fire scenarios and Fire Zone 39A lacks an automatic fire detection or automatic fire suppression system, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 50 minutes of margin available for OMA #11 and 22.5 minutes of margin available for OMA #12, Fire Zone 39A still lacks adequate defense-in-depth. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 39A and that OMAs #11 and #12 are unacceptable for the purpose of providing the level of protection intended by the regulation. Therefore, the NRC staff finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 39A.

3.21 Fire Area J—Unit 1 Control Room, Turbine Building, Superheater Building, Nuclear Service Building, Chemical Systems Building, Administration Building, Screenwell House, and Unit 2 Turbine Building (Fire Zone 43A—Ground Floor, Elevation 15–0″ Unit 2 Turbine Building)

3.21.1 Fire Prevention

The licensee stated that the fire loading in this zone is low and that the fixed combustibles in this zone consist of cable insulation, lube oil, plastic, wood, electrical panels, and cabinets and that the transient combustibles in this zone consist of trash, cardboard drums, cleaning rags, lube oil, plastic, fiberglass ladders, and paint. The licensee also stated that the ignition sources in this zone consist of cables, junction boxes, MCC, motors, pumps, electrical cabinets, high voltage arcing faults, and an air dryer. The licensee further stated that since Fire Area J does not contain safety-related structures, systems or components, it is not subject to the explicit transient combustible controls of procedure EN–DC–161. However, operator rounds performed each shift provide for the monitoring of combustibles that could present an unacceptable fire safety challenge. In addition, the licensee stated that procedures OAP–017 (Plant Surveillance and Operator Rounds) and EN–MA–132 (Housekeeping) include guidance for monitoring general area cleanliness as well as monitoring for accumulations of combustibles.

3.21.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 43A does not have a fire detection or automatic fire suppression system installed.

3.21.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 43A has an approximate floor area of

6,600 square feet and an approximate ceiling height of 21′–0″. The licensee stated that cable JC2–YA9, which is associated with Buses 5A and 6A, is routed through Fire Zone 43A in a tray located approximately 15 feet above the floor and that ignition sources in the zone located less than 20 feet horizontally from the cable consist of two MCCs, an air dryer skid, 6.9 kV switchgear, and an electrical cabinet. According to the licensee, the MCCs are located under the cable routing separated from the cable by approximately 7.7 feet vertically, the air dryer skid is separated from the cable by approximately 6.1 feet horizontally, the electrical cabinet is separated from the cable by approximately 2 feet horizontally and 9.2 feet vertically, and the 6.9 kV switchgear is separated from the cable by approximately 0.7 feet horizontally and 7.7 feet vertically.

The licensee also stated that cable AC4–BA6 is routed through Fire Zone 43A in a tray located approximately 12 feet above the floor and that ignition sources in the zone located less than 20 feet horizontally from the cable consist of 6.9 kV switchgear and an electrical cabinet. According to the licensee, the 6.9 kV switchgear is separated from the cable by zero feet horizontally and approximately 3.7 feet vertically and the electrical cabinet is separated from the cable by approximately 6 feet horizontally.

The licensee also stated that cable AA3–BA5 is associated with instrument buses 23 and 23A and is routed through Fire Zone 43A in tray located approximately 14 feet above the floor and that ignition sources in the zone located less than 20 feet horizontally from the cable consist of 6.9 kV switchgear and an electrical cabinet. According to the licensee, the 6.9 kV switchgear is separated from the cable by approximately 0 feet horizontally and 5 feet vertically and the electrical cabinet is separated from the cable by approximately 3 feet horizontally and 7 feet vertically.

The licensee also stated that cable AD1–BA8 is associated with instrument buses 23 and 23A and is routed through Fire Zone 43A in tray located approximately 14 feet above the floor and that ignition sources in the zone located less than 20 feet horizontally from the cable consist of 6.9 kV switchgear and an electrical cabinet. According to the licensee, the 6.9 kV switchgear is separated from the cable by approximately 0 feet horizontally and 5.6 feet vertically and the electrical cabinet is separated from the cable by approximately 6 feet horizontally.

The licensee stated that cable ECE19–MN3/01, which is associated with valve LCV–112B, is routed through Fire Zone 43A in a cable tray located approximately 13 feet above the floor and that ignition sources in the zone located less than 20 feet horizontally from the cable consist of an MCC, an air dryer skid, 6.9 kV switchgear, a portable Duraline power station, and an electrical cabinet. According to the licensee, the MCC is separated from the cable by approximately 3.2 feet horizontally and 0 feet vertically, the air dryer skid is separated from the cable by approximately 7.7 feet horizontally and 2.6 feet vertically, the electrical cabinet is separated from the cable by approximately 2 feet horizontally and 7.3 feet vertically, the 6.9 kV switchgear is separated from the cable by approximately 0.7 feet horizontally and 5.8 feet vertically, and the Duraline power station is separated from the cable by approximately 19.5 feet horizontally.

As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.21.4 OMAs Credited for a Fire in Fire Area J (Fire Zone 43A)

3.21.4.1 OMA #11—Trip Breakers 52/5A and 52–SAC on Bus 5A and 52/6A and 52/TAO at Bus 6A and Remove Control Power Fuses

OMA #11 was evaluated in Section 3.17.4.1 above. As stated in Section 3.17.4.1, OMA #11 has acceptable margin for all fire zones in Fire Area J.

3.21.4.2 OMA #12—Transfer Instrument Buses 23 and 23A to Emergency Power Source

The licensee stated that Instrument buses 23 and 23A could experience a loss of their normal power source (125 VDC power panel 23) as a result of fire in Fire Zone 43A. If a fire were to occur and causes a loss of offsite power and damages the cables identified above, the licensee stated that OMA #12 is available to swap Instrument Buses 23 and 23A to their backup power source (MCC–29A). If OMA #12 becomes necessary, the licensee stated that they have assumed a 5.5-minute diagnosis period and that the required time to perform the action is 2 minutes while the time available is 30 minutes, which provides 22.5 minutes of margin.

3.21.4.3 OMA #13—Align Charging Pump Suction to RWST

The licensee stated that fire-induced cable damage may render alternate charging pump suction supply valve LCV–112B (normally closed RWST outlet valve) inoperable. In the event that cable failures have rendered LCV–112B inoperable, local valve manipulations are required to support alignment of the charging pump suction to the alternate source, the RWST.

If a fire were to occur and renders the alternate charging pump suction supply valve LCV–112B inoperable, the licensee stated that OMA #13 is available to locally close valve LCV–112C and open manual valve 288 to provide a bypass around RWST outlet valve LCV–112B and provide water to the charging pump suction. If OMA #13 becomes necessary, the licensee stated that they have assumed a 14-minute diagnosis period and that the required time to perform the action is 18 minutes while the time available is 75 minutes, which provides 43 minutes of margin.

3.21.5 Conclusion for Fire Area J (Fire Zone 43A)

Since the licensee described postulated fire scenarios and Fire Zone 43A lacks an automatic fire detection or automatic fire suppression system, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 50 minutes of margin available for OMA #11, 22.5 minutes of margin available for OMA #12, and 43 minutes of margin available for OMA #13, Fire Zone 43A lacks adequate defense-in-depth. Therefore, the NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 43A and that OMAs #11, #12, and #13 are unacceptable for the purpose of providing the level of protection intended by the regulation. Therefore, the NRC staff finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 43A.

3.22 Fire Area J—Unit 1 Control Room, Turbine Building, Superheater Building, Nuclear Service Building, Chemical Systems Building, Administration Building, Screenwell House, and Unit 2 Turbine Building (Fire Zone 45A—Ground Floor, Elevation 15–0″ and 3′–3″ of the Unit 2 Turbine Building)

3.22.1 Fire Prevention

The licensee stated that the fire loading in this zone is low and that the fixed combustibles in this zone consist of cable insulation, lube oil, vinyl insulation, and hydrogen and that the transient combustibles in this zone

consist of trash, cardboard drums, lube oil, fiberglass ladders, paint, and radiation boundaries. The licensee also stated that the ignition sources in this zone consist of cables, junction boxes, MCC, motors, pumps, and electrical cabinets. The licensee further stated that since Fire Area J does not contain safety-related structures, systems or components, it is not subject to the explicit transient combustible controls of procedure EN–DC–161. However, operator rounds performed each shift provide for the monitoring of combustibles that could present an unacceptable fire safety challenge. In addition, the licensee stated that procedures OAP–017 (Plant Surveillance and Operator Rounds) and EN–MA–132 (Housekeeping) include guidance for monitoring general area cleanliness as well as monitoring for accumulations of combustibles.

3.22.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 45A does not have a fire detection or automatic fire suppression system installed.

3.22.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 45A has an approximate floor area of 5,380 square feet and an approximate ceiling height of 12′–4″. The licensee stated that cable AG5–XA5, which affects buses 5A and 6A, is located in Fire Zone 45A and that ignition sources in the zone located less than 20 feet horizontally from cable AG5–XA5 consist of seven electrical cabinets, a 150KVA dry transformer, three motors, and an MCC. According to the licensee, three electrical cabinets are located under the cable separated by approximately 3 feet vertically or greater, four electrical cabinets are separated from the cable by approximately 2 feet horizontally or greater, the 150KVA dry transformer is separated from the cable by approximately 1.6 feet horizontally and 6.7 feet vertically. The motors are separated from the cable by approximately 4.6 feet horizontally or greater, and the MCC is separated from the cable by approximately 7.5 feet horizontally. As discussed in Section 3.0 above, the licensee could not demonstrate any separation between credited and redundant trains of equipment.

3.22.4 OMAs Credited for a Fire in Fire Area J (Fire Zone 45A)

3.22.4.1 OMA #11—Trip Breakers 52/5A and 52–SAC on Bus 5A and 52/6A and 52/TAO at Bus 6A and Remove Control Power Fuses

OMA #11 was evaluated in Section 3.17.4.1 above. As stated in Section 3.17.4.1, OMA #11 has acceptable margin for all fire zones in Fire Area J.

3.22.5 Conclusion for Fire Area J (Fire Zone 45A)

Since the licensee described postulated fire scenarios and Fire Zone 45A lacks an automatic fire detection or automatic fire suppression system, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 50 minutes of margin available for OMA #11, Fire Zone 45A still lacks adequate defense-in-depth. The NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 45A and that OMA #11 is unacceptable for the purpose of providing the level of protection intended by the regulation. Therefore, the NRC staff finds that an exemption from III.G.2 based on OMA #11 cannot be granted for Fire Zone 45A.

3.23 Fire Area J—Unit 1 Control Room, Turbine Building, Superheater Building, Nuclear Service Building, Chemical Systems Building, Administration Building, Screenwell House, and Unit 2 Turbine Building (Fire Zone 46A—Ground Floor, Elevation 12′–0″ and 3′–3″ Unit 2 Turbine Building)

3.23.1 Fire Prevention

The licensee stated that the fire loading in this zone is low and that the fixed combustibles in this zone consist of cable insulation and lube oil and that the transient combustibles in this zone consist of trash, cleaning rags, lube oil, and paint. The licensee also stated that the ignition sources in this zone consist of cables, junction boxes, motors, pumps, and electrical cabinets. The licensee further stated that since Fire Area J does not contain safety-related structures, systems or components, it is not subject to the explicit transient combustible controls of procedure EN–DC–161. However, operator rounds performed each shift provide for the monitoring of combustibles that could present an unacceptable fire safety challenge. In addition, the licensee stated that procedures OAP–017, ''Plant Surveillance and Operator Rounds,'' and EN–MA–132, ''Housekeeping,'' include guidance for monitoring general area cleanliness as well as monitoring for accumulations of combustibles.

3.23.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 46A does not have a fire detection or automatic fire suppression system installed.

3.23.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 46A has an approximate floor area of 12,350 square feet and an approximate ceiling height of 12′–4″. The licensee stated that cable JC2–YA9, which is associated with Buses 5A and 6A, is routed through Fire Zone 46A in a tray located approximately 15 feet above the floor and that ignition sources in the zone located less than 20 feet horizontally from the cable consist of two MCCs, an air dryer skid, 6.9kV switchgear, and an electrical cabinet. According to the licensee, the MCCs are located under the cable routing separated from the cable by approximately 7.7 feet vertically, the air dryer skid is separated from the cable by approximately 6.1 feet horizontally, the electrical cabinet is separated from the cable by approximately 2 feet horizontally and 9.2 feet vertically, and the 6.9kV switchgear is separated from the cable by approximately 0.7 feet horizontally and 7.7 feet vertically.

The licensee also stated that cable JB1–L91, which is associated with instrument buses 23 and 23A, is routed through the Fire Zone 46A.

The licensee also stated that cable ECE19–MN3/01, which is associated with valve LCV–112B, is routed through Fire Zone 46A in a cable tray located approximately 13 feet above the floor and that ignition sources in the zone located less than 20 feet horizontally from the cable consist of an MCC, an air dryer skid, 6.9kV switchgear, a portable Duraline power station, and an electrical cabinet. According to the licensee, the MCC is separated from the cable by approximately 3.2 feet horizontally and 0 feet vertically, the air dryer skid is separated from the cable by approximately 7.7 feet horizontally and 2.6 feet vertically, the electrical cabinet is separated from the cable by approximately 2 feet horizontally and 7.3 feet vertically, the 6.9kV switchgear is separated from the cable by approximately 0.7 feet horizontally and 5.8 feet vertically, and the Duraline power station is separated from the

cable by approximately 19.5 feet horizontally.

As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.23.4 OMAs Credited for a Fire in Fire Area J (Fire Zone 46A)

3.23.4.1 OMA #11—Trip Breakers 52/5A and 52–SAC on Bus 5A and 52/6A and 52/TAO at Bus 6A and Remove Control Power Fuses

OMA #11 was evaluated in Section 3.17.4.1 above. As stated in Section 3.17.4.1, OMA #11 has acceptable margin for all fire zones in Fire Area J.

3.23.4.2 OMA #12—Transfer Instrument Buses 23 and 23A to Emergency Power Source

The licensee stated that instrument buses 23 and 23A could experience a loss of their normal power source (125 VDC power panel 23) as a result of fire in Fire Zone 46A. If this were to occur, the licensee stated that OMA #12 is available to swap instrument buses 23 and 23A to their backup power source (MCC–29A). If OMA #12 becomes necessary, the licensee stated that they have assumed a 5.5-minute diagnosis period and that the required time to perform the action is 2 minutes while the time available is 30 minutes, which provides 22.5 minutes of margin.

3.23.4.3 OMA #13—Align Charging Pump Suction to RWST

The licensee stated that fire-induced cable damage may render alternate charging pump suction supply valve LCV–112B (normally closed RWST outlet valve) inoperable. In the event that cable failures have rendered LCV–112B inoperable, this valve is required to be opened to support alignment of charging pump suction to the alternate source, the RWST.

If a fire were to occur and it renders alternate charging pump suction supply valve LCV–112B inoperable, the licensee stated that OMA #13 is available to locally close valve LCV–112C and open manual valve 288 to provide a bypass around RWST outlet valve LCV–112B and provide water to the charging pump suction. If OMA #13 becomes necessary, the licensee stated that they have assumed a 14-minute diagnosis period and that the required time to perform the action is 18 minutes while the time available is 75 minutes, which provides 43 minutes of margin.

3.23.5 Conclusion for Fire Area J (Fire Zone 46A)

Since the licensee described postulated fire scenarios and Fire Zone 46A lacks an automatic fire detection or automatic fire suppression system, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 50 minutes of margin available for OMA #11, 22.5 minutes of margin available for OMA #12, and 43 minutes of margin available for OMA #13, Fire Zone 46A still lacks adequate defense-in-depth. The NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 46A and that OMAs #11, #12, and #13 are unacceptable for the purpose of providing the level of protection intended by the regulation. Therefore, the NRC staff finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 46A.

3.24 Fire Area J—Unit 1 Control Room, Turbine Building, Superheater Building, Nuclear Service Building, Chemical Systems Building, Administration Building, Screenwell House, and Unit 2 Turbine Building (Fire Zone 47A—Ground Floor, Elevation 15′–0″ Unit 2 Turbine Building)

3.24.1 Fire Prevention

The licensee stated that the fire loading in this zone is low and that the fixed combustibles in this zone consist of cable insulation and that the transient combustibles in this zone consist of trash, lube oil, rubber hose, and paint. The licensee also stated that the ignition sources in this zone consist of cables, junction boxes, MCC vertical panels, and electrical cabinets. The licensee further stated that since Fire Area J does not contain safety-related structures, systems or components, it is not subject to the explicit transient combustible controls of procedure EN–DC–161. However, operator rounds performed each shift provide for the monitoring of combustibles that could present an unacceptable fire safety challenge. In addition, the licensee stated that procedures OAP–017 (Plant Surveillance and Operator Rounds) and EN–MA–132 (Housekeeping) include guidance for monitoring general area cleanliness as well as monitoring for accumulations of combustibles.

3.24.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 47A does not have a fire detection or automatic fire suppression system installed.

3.24.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 47A has an approximate floor area of 5,175 square feet and an approximate ceiling height of 37′–0″. The licensee stated that cable JC2–YA9, which is associated with Buses 5A and 6A, is located in Fire Zone 47A in a cable tray located approximately 8 feet above the floor and that ignition sources in the zone located less than 20 feet horizontally from cable JC2–YA9 consist of electrical cabinets, motors, and MCCs. According to the licensee, the electrical cabinets are separated from the cable by approximately 3.8 feet horizontally and 1.9 feet vertically and the MCCs are located under the cable separated from the cable by approximately 0.2 feet vertically. As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.24.4 OMAs Credited for a Fire in Fire Area J (Fire Zone 47A)

3.24.4.1 OMA #11—Trip Breakers 52/5A and 52–SAC on Bus 5A and 52/6A and 52/TAO at Bus 6A and Remove Control Power Fuses

OMA #11 was evaluated in Section 3.17.4.1 above. As stated in Section 3.17.4.1, OMA #11 has acceptable margin for all fire zones in Fire Area J.

3.24.5 Conclusion for Fire Area J (Fire Zone 47A)

Since the licensee described postulated fire scenarios and Fire Zone 47A lacks an automatic fire detection or automatic fire suppression system, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 50 minutes of margin available for OMA #11, Fire Zone 47A still lacks adequate defense-in-depth. The NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 47A and that OMA #11 is unacceptable for the purpose of providing the level of protection intended by the regulation. Therefore, the NRC staff finds that an exemption from III.G.2 based on OMA #11 cannot be granted for Fire Zone 47A.

3.25 Fire Area J—Unit 1 Control Room, Turbine Building, Superheater Building, Nuclear Service Building, Chemical Systems Building, Administration Building, Screenwell House, and Unit 2 Turbine Building (Fire Zone 50A—Mezzanine Floor, Elevation 36′–9″ Unit 2 Turbine Building)

3.25.1 Fire Prevention

The licensee stated that the fire loading in this zone is low and that the fixed combustibles in this zone consist of cables, plastic, cellulose, and office materials and that the transient combustibles in this zone consist of trash, vinyl covers, lube oil, and paint. The licensee also stated that the ignition sources in this zone consist of cables, junction boxes, dry transformers, motors, pumps, and electrical cabinets. The licensee further stated that since Fire Area J does not contain safety-related structures, systems or components, it is not subject to the explicit transient combustible controls of procedure EN–DC–161. However, operator rounds performed each shift provide for the monitoring of combustibles that could present an unacceptable fire safety challenge. In addition, the licensee stated that procedures OAP–017 (Plant Surveillance and Operator Rounds) and EN–MA–132 (Housekeeping) include guidance for monitoring general area cleanliness as well as monitoring for accumulations of combustibles.

3.25.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 50A does not have a fire detection or automatic fire suppression system installed.

3.25.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 50A has an approximate floor area of 1,550 square feet and an approximate ceiling height of 16′-0″. The licensee stated that cable JC2–YA9, which is associated with Buses 5A and 6A, is located in Fire Zone 50A in a cable tray located approximately 8 feet above the floor and that ignition sources in the zone located less than 20 feet horizontally from cable JC2–YA9 consist of electrical cabinets, motors, and MCCs. According to the licensee, the electrical cabinets are separated from the cable by approximately 3.8 feet horizontally and 1.9 feet vertically and a motor is located under the cable separated by approximately 5.2 feet vertically. The licensee also stated that cable AG5–XA5, which is associated with instrument buses 23 and 23A, is routed through the Fire Zone 50A and that ignition sources in the zone located less than 20 feet horizontally from the cable consist of electrical cabinets, a dry transformer, motors, and an MCC. According to the licensee, three of the electrical cabinets are located under the cable separated from the cable by approximately 3 feet vertically or greater, another four electrical cabinets are separated from the cable by approximately 2 feet horizontally or greater, the dry transformer is separated from the cable by approximately 1.6 feet horizontally and 6.7 feet vertically, the motors are separated from the cable by approximately 4.6 feet horizontally or greater, and the MCC is separated from the cable by approximately 7.5 feet horizontally. As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.25.4 OMAs Credited for a Fire in Fire Area J (Fire Zone 50A)

3.25.4.1 OMA #11—Trip Breakers 52/5A and 52–SAC on bus 5A and 52/6A and 52/TAO at bus 6A and Remove Control Power Fuses

OMA #11 was evaluated in Section 3.17.4.1 above. As stated in Section 3.17.4.1, OMA #11 has acceptable margin for all fire zones in Fire Area J.

3.25.4.2 OMA #12—Transfer Instrument Buses 23 and 23A to Emergency Power Source

The licensee stated that instrument buses 23 and 23A could experience a loss of their normal power source (125 VDC power panel 23) as a result of fire in Fire Zone 50A. If this were to occur, the licensee stated that OMA #12 is available to swap Instrument Buses 23 and 23A to their backup power source (MCC–29A). If OMA #12 becomes necessary, the licensee stated that they have assumed a 5.5–minute diagnosis period and that the required time to perform the action is 2 minutes while the time available is 30 minutes, which provides 22.5 minutes of margin.

3.25.5 Conclusion for Fire Area J (Fire Zone 50A)

Since the licensee described postulated fire scenarios and Fire Zone 50A lacks an automatic fire detection or automatic fire suppression system and a robust combustible controls program, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there are 50 minutes of margin available for OMA #11 and 22.5 minutes of margin available for OMA #12, Fire Zone 50A still lacks adequate defense-in-depth. The NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 50A and that OMAs #11 and #12 are unacceptable for the purpose of providing the level of protection intended by the regulation. Therefore, the NRC staff finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 50A.

3.26 Fire Area J—Unit 1 Control Room, Turbine Building, Superheater Building, Nuclear Service Building, Chemical Systems Building, Administration Building, Screenwell House, and Unit 2 Turbine Building (Fire Zone 270—General Area of the 33′ Elev. of the Unit 1 Superheater Bldg.)

3.26.1 Fire Prevention

The licensee stated that the fire loading in this zone is low and that the fixed combustibles in this zone consist of cables and that the transient combustibles in this zone consist of trash, cardboard drums, a flammable liquid cabinet, plastic, wood, and paint. The licensee also stated that the ignition sources in this zone consist of cables, junction boxes, dry transformers, motors, a battery charger, an MCC vertical panel, and electrical cabinets. The licensee further stated that since Fire Area J does not contain safety-related structures, systems or components, it is not subject to the explicit transient combustible controls of procedure EN–DC–161. However, operator rounds performed each shift provide for the monitoring of combustibles that could present an unacceptable fire safety challenge. In addition, the licensee stated that procedures OAP–017 (Plant Surveillance and Operator Rounds) and EN–MA–132 (Housekeeping) include guidance for monitoring general area cleanliness as well as monitoring for accumulations of combustibles.

3.26.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 270 does not have a fire detection or automatic fire suppression system installed.

3.26.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 270 has an approximate floor area of 13,000 square feet and an approximate ceiling height of 19′-0″. The licensee also stated

that cables EDB8–EPB3, associated with instrument buses 23 and 23A, are routed through the Fire Zone 270 in rigid steel conduit and that ignition sources in the zone located less than 20 feet horizontally from the cables consist of electrical cabinets, a dry transformer, batteries, and an MCC. According to the licensee, one of the electrical cabinets is separated from the cables by approximately 12.8 feet horizontally, another electrical cabinet is separated from the cables by approximately 5.5 feet horizontally, the dry transformer is separated from the cables by approximately 13.6 feet horizontally, the MCC is separated from the cables by approximately 18.5 feet horizontally, and there is no separation between the cables and the batteries since the cables originate at the batteries.

As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.26.4 OMAs Credited for a Fire in Fire Area J (Fire Zone 270)

3.26.4.1 OMA #12—Transfer Instrument Buses 23 and 23A to Emergency Power Source

The licensee stated that Instrument buses 23 and 23A could experience a loss of their normal power source (125 VDC power panel 23) as a result of fire in Fire Zone 270. If this were to occur, the licensee stated that OMA #12 is available to swap Instrument Buses 23 and 23A to their backup power source (MCC–29A). If OMA #12 becomes necessary, the licensee stated that they have assumed a 5.5-minute diagnosis period and that the required time to perform the action is 2 minutes while the time available is 30 minutes, which provides 22.5 minutes of margin.

3.26.5 Conclusion for Fire Area J (Fire Zone 270)

Since the licensee described postulated fire scenarios and Fire Zone 270 lacks a fire detection or automatic fire suppression system and a robust combustible controls program, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there are 22.5 minutes of margin available for OMA #12, Fire Zone 270 still lacks adequate defense-in-depth. The NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 270 and that OMA #12 is unacceptable for the purpose of providing the level of protection intended by the regulation. Therefore, the NRC staff finds that an exemption from III.G.2 based on OMA #12 cannot be granted for Fire Zone 270.

3.27 Fire Area K—Auxiliary Feed Pump Building (not Including the AFW Pump Room) (Fire Zone 60A—Chemical Addition Area, Elev. 33′–0″)

3.27.1 Fire Prevention

The licensee stated that the fire loading in this zone is low and that there are no fixed combustibles in this zone and that the transient combustibles in this zone consist of trash, fiber drums, and paint. The licensee also stated that the ignition sources in this zone consist of motors, blowers, and electrical cabinets.

3.27.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 60A does not have a fire detection or automatic fire suppression system installed.

3.27.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 60A has an approximate floor area of 1,210 square feet and an approximate ceiling height of 8′–6″. The licensee stated that cables LL8–JF5 for FCV–406A, LL9–JF9 for FCV–406C, JB1–YN9 for FCV–1121, and JB1–PT1/2 and PT1–A16 associated with 21 AFW pump are routed through Fire Zone 60A in rigid steel conduit that runs vertically from floor to ceiling and that ignition sources in the zone located less than 20 feet horizontally from the cables consist of one electrical cabinet and four motors. According to the licensee, the electrical cabinet is separated from the cables by approximately 7 feet horizontally and the motors are separated from the cables by approximately 5.5 feet horizontally or greater.

The licensee also stated that cables PU9–JF9 for FCV–406D, PU9–JH1 for FCV–406B, PU9–JG2 for FCV–406A, and PU9–JF2 for FCV–406C are routed through Fire Zone 60A in a combination of rigid steel conduits and a cable tray that runs from floor to ceiling and that ignition sources in the zone located less than 20 feet horizontally from the cables consist of two electrical cabinet and four motors. According to the licensee, the electrical cabinet is separated from the cables by approximately 7 feet horizontally or greater and the motors are separated from the cables by approximately 1.6 feet horizontally.

As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.27.4 OMAs Credited for a Fire in Fire Area K (Fire Zone 60A)

3.27.4.1 OMA #14—Transfer 21 AFW Pump to Alternate Safe Shutdown System Power Source

If a fire were to occur and it causes damage to the cables associated with the 21 AFW pump normal power supply, the licensee stated that OMA #14 is available to operate transfer switch EDC5 and close the supply breaker at substation 12FD3 to transfer 21 AFW pump to the Alternate Safe Shutdown System power supply. If OMA #14 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 34 minutes, which provides 12.5 minutes of margin.

3.27.4.2 OMA #15—Open 21 AFW Pump Recirculation Bypass Valve (BFD–77)

If a fire were to occur and it causes damage to the cables associated with the 21 AFW pump recirculation valve, FCV–1121, the licensee stated that OMA #15 is available to open the 21 AFW pump recirculation bypass valve BFD–77. If OMA #15 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 5 minutes while the time available is 34 minutes, which provides 24.5 minutes of margin.

3.27.5 Conclusion for Fire Area K (Fire Zone 60A)

Since the licensee described postulated fire scenarios and Fire Zone 60A lacks an automatic fire detection or automatic fire suppression system, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 12.5 minutes of margin available for OMA #14 and 24.5 minutes of margin available for OMA #15, Fire Zone 60A still lacks adequate defense-in-depth.

The NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 60A and that OMAs #14 and #15 are unacceptable for the purpose of providing the level of protection intended by the regulation. Therefore,

the NRC staff finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 60A.

3.28 Fire Area K—Auxiliary Feed Pump Building (not Including the AFW Pump Room) (Fire Zone 65A—Main Steam and Feedwater Valve Area 43′–0″, 65′–0″, and 74′–0″)

3.28.1 Fire Prevention

The licensee stated that the fire loading in this zone is low and that fixed combustibles in this zone consist of wood and that the transient combustibles in this zone consist of trash and paint. The licensee also stated that the ignition sources in this zone consist of a transformer and electrical cabinets.

3.28.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 65A does not have a fire detection or automatic fire suppression system installed.

3.28.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 65A has an approximate floor area of 1,210 square feet and an approximate ceiling height of 43′–0″. The licensee stated that cables PU9–JF9 for FCV–406D, PU9–JH1 for FCV–406B, PU9–JG2 for FCV–406A, PU9–JF2 for FCV–406C, LL8–JF5 for FCV–406A, LL9–JF9 for FCV–406C, JB1–YN9 for FCV–1121, and JB1–PT1/2 and PT1–A16 associated with 21 AFW pump are routed through Fire Zone 65A in rigid steel conduit that runs vertically from the floor to a height of approximately 6.5 feet to 8.5 feet above the floor before exiting the zone and that ignition sources in the zone located less than 20 feet horizontally from the cables consist of two switches. According to the licensee, the switches are separated from the cables by approximately 2.5 feet horizontally. As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.28.4 OMAs Credited for a Fire in Fire Area K (Fire Zone 65A)

3.28.4.1 OMA #14—Transfer 21 AFW Pump to Alternate Safe Shutdown System Power Source

If a fire were to occur and it causes damage to the cables associated with the 21 AFW pump normal power supply, the licensee stated that OMA #14 is available to operate transfer switch EDC5 and close supply breaker at substation 12FD3 to transfer 21 AFW pump to the Alternate Safe Shutdown System power supply. If OMA #14 becomes necessary, the licensee stated that they have assumed a 4.5-minute diagnosis period and that the required time to perform the action is 17 minutes while the time available is 34 minutes, which provides 12.5 minutes of margin.

3.28.4.2 OMA #15—Open 21 AFW Pump Recirculation Bypass Valve (BFD–77)

If a fire were to occur and it causes damage to the cables associated with the 21 AFW pump recirculation valve, FCV–1121, the licensee stated that OMA #15 is available to open the 21 AFW pump recirculation bypass valve BFD–77. If OMA #15 becomes necessary, the licensee stated that they have assumed a 4.5–minute diagnosis period and that the required time to perform the action is 5 minutes while the time available is 34 minutes, which provides 24.5 minutes of margin.

3.28.5 Conclusion for Fire Area K (Fire Zone 65A)

Since the licensee described postulated fire scenarios and Fire Zone 65A lacks an automatic fire detection or automatic fire suppression system, and any discernable separation between the credited and redundant equipment in the area, it is possible that a fire would not be detected and extinguished in a reasonable amount of time to ensure that at least one train of equipment remains free of fire damage following a fire event. Although there is 12.5 minutes of margin available for OMA #14 and 24.5 minutes of margin available for OMA #15, Fire Zone 65A still lacks adequate defense-in-depth. The NRC staff finds that the defense-in-depth is insufficient to demonstrate reasonable assurance that safe shutdown can be achieved for a fire in Fire Zone 65A and that OMAs #14 and #15 are unacceptable for the purpose of providing the level of protection intended by the regulation. Therefore, the NRC staff finds that an exemption from III.G.2 based on these OMAs cannot be granted for Fire Zone 65A.

3.29 Fire Area P—Component Cooling Pump Room, Elevation 68′–0″—PAB (Fire Zone 1—Component Cooling Pump Room, Elevation 68′–0″—PAB)

3.29.1 Fire Prevention

The licensee stated that the fire loading in this zone is low and that there are no fixed combustibles in this zone and that the transient combustibles in this zone consist of trash, radiation boundaries, and paint. The licensee also stated that the ignition sources in this zone consist of electric motors and pumps.

3.29.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 1 has an area-wide, fire detection system installed but does not have an automatic fire suppression system installed. The licensee also stated that the fire detection system is designed and installed in accordance with NFPA 72D, 1975 Edition.

3.29.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 1 has an approximate floor area of 710 square feet and an approximate ceiling height of 12′–0″. The licensee stated that power supply cables for 21, 22, and 23 component cooling water (CCW) pumps are located in this zone in rigid steel conduit for each motor and that the conduit for 23 CCW Pump is wrapped with an ERFBS rated for 30 minutes. The licensee also stated that the pumps are located approximately 10 feet from each other and that a radiant energy shield is installed between the 22 CCW pump and the 23 CCW pump. In addition, the licensee stated that the ignition sources in the zone consist of the three CCW pumps and two electrical cabinets. According to the licensee, the conduits for 21 and 22 CCW pumps are routed vertically from the motors to approximately 8.8 feet above the floor and are separated by approximately 0.5 feet horizontally, the cable for 23 CCW pump rises vertically from the motor to approximately 9.5 feet above the floor, and that the conduit for the 22 CCW Pump crosses over the 21 CCW Pump. Also according to the licensee, the electrical cabinets are separated from the 21 and 22 CCW pump power cables by approximately 19.5 feet horizontally or greater, one of the electrical cabinets is located directly under the 23 CCW pump power cable separated by approximately 5.2 feet vertically, and the other electrical cabinet is separated from the 23 CCW pump power conduit by approximately 3.8 feet horizontally and 4.1 feet vertically. As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.29.4 OMAs Credited for a Fire in Fire Area P (Fire Zone 1)

3.29.4.1 OMA #16—Transfer 23 CCW Pump to Alternate Safe Shutdown System Power Feed if Normal Power or Control Is Lost

The licensee stated that the CCW pump room contains all three CCW pumps and that power to the CCW pumps is normally supplied from the

480V switchgear. The licensee also stated that the Alternate Safe Shutdown System provides the capability to use individual components as required to meet specific plant shutdown goals and that to ensure the availability of at least one CCW pump for SSD in the event that the normal power supply is disabled as a result of a fire, Alternate Safe Shutdown System power can be supplied to CCW pump 23 through manual transfer switch EDF9 which is hardwired to Alternate Safe Shutdown System bus 12FD3 at the Alternate Safe Shutdown System load center, where starting and stopping 23 CCW pump can be accomplished.

In the unlikely event that a fire occurs and causes a loss of all three trains of normal power, the licensee stated that OMA #16 is available to align the 23 CCW pump to an alternate power supply, thereby recovering one of the redundant CCW trains. If OMA #16 becomes necessary, the licensee stated that they have assumed a 24-minute diagnosis period and that the required time to perform the action is 7 minutes while the time available is greater than 60 minutes, which provides 29 minutes of margin.

3.29.4.2 OMA #17—Start Appendix R Diesel Generator (ARDG) if Normal Power and Offsite Power Are Lost

The licensee confirmed that Fire Area P presents no impact to cables or components associated with the onsite power supplied by the safety-related EDGs 21, 22, and 23. In the event that it is desired or necessary to utilize the ARDG, the licensee stated that it would only be in response to CCR operators observing the loss of indication for power availability to all 480V safety-related buses. The licensee also stated that there are no credible fire scenarios that would necessitate this OMA.

In the unlikely event that a fire occurs and causes a loss of both normal and offsite power supply, the licensee stated that OMA #17 is available to start the ARDG. If OMA #17 becomes necessary, the licensee stated that they have assumed that offsite power is unavailable at the outset of the event and that the required time to perform the action is 17 minutes while the time available is 60 minutes, which provides 43 minutes of margin.

3.29.5 Conclusion for Fire Area P (Fire Zone 1)

Given the low combustible fuel loading, ERFBS and radiant energy shield noted above, and the automatic fire detection system, it is unlikely that a fire would occur and go undetected and not be extinguished in a reasonable amount of time to ensure that at least one train of equipment necessary for safe shutdown remains free of fire damage. For OMA #17, the NRC staff finds that a fire in Fire Zone 1 should not affect power availability on the 480V safety-related buses, and therefore OMA #17 would not be required. In the unlikely event that a fire does occur and causes damage that necessitates the use of OMA #16, there is 29 minutes of margin available to provide assurance that safe shutdown capability will be maintained following the postulated fire events. The NRC staff had previously issued an exemption from III.G for Fire Zone 1 in 1984 (ML003776266). In that exemption, the NRC staff found that the low fire load, the fire detection system, and features such as fire wrap on the 23 CCW pump cables from transfer switch EDF–9 and the non-combustible fire barriers in the room justified an exemption. The NRC staff finds that there is adequate defense-in-depth provided for Fire Zone 1 and that OMA #16 is acceptable for the purpose of providing the level of protection intended by the regulation. Therefore, the NRC staff finds that the previous III.G.2 exemption for Fire Zone 1 remains valid.

3.30 Fire Area YD—Exterior Yard (Fire Zone 900—Yard)

3.30.1 Fire Prevention

The licensee stated that this zone is an outdoor area with minimal fixed combustibles and that any ignition sources would be transient in nature. The licensee also stated that although this zone contains minimal fixed combustibles, postulated fire scenarios would involve transient materials and ignition sources.

3.30.2 Detection, Control, and Extinguishment

The licensee stated that Fire Zone 900 does not have a fire detection or automatic fire suppression system installed.

3.30.3 Preservation of Safe Shutdown Capability

The licensee stated that Fire Zone 900 is an outside area with no walls or ceiling and open to the exterior so it is unlikely that smoke or heat would accumulate in the zone to cause damage to equipment not exposed directly to a fire. The licensee stated that Fire Zone 900 contains cable ECD3–EXF6/2, which is associated with motor-operated valve 227, and is routed outside through rigid steel conduit from approximately 12 feet above the floor at elevation of 98' which is also the roof of 80' elevation to approximately elevation 104' where it enters the fan house. As discussed in Section 3.0 above, the licensee did not demonstrate any separation between credited and redundant trains of equipment.

3.30.4 OMAs Credited for a Fire in Fire Area YD (Fire Zone 900)

3.30.4.1 OMA #18—Align Charging Pump Makeup Path to RCS

The licensee stated that in order to ensure a reliable charging makeup path to the RCS, air-operated valve HCV–142 must remain open or motor-operated bypass valve 227, which is normally closed, must be opened and that air-operated valve HCV–142 is assumed to fail closed as designed in response to a loss of instrument air. The licensee stated that OMA #18 is only required if normal flowpath valve HCV–142 fails closed and that spurious isolation of the charging makeup path to the RCS is identified in the CCR by operators confirming that a charging pump is in operation, but pressurizer level is decreasing. Since no CCR pressurizer level indicating channels have cables routed through Fire Area YD, the CCR indication of pressurizer level can be expected to remain unaffected and operable in the event of a fire in Fire Zone 900.

In the unlikely event that a fire occurs and causes damage to cable ECD3–EXF6/2 and causes HCV–142 to close in response to a loss of instrument air, the licensee stated that OMA #18 is available to align charging makeup path to RCS by manually opening bypass valve 227 to mitigate a spuriously closed HCV–142 and restore or maintain a reliable charging makeup path to the RCS. If OMA #18 becomes necessary, the licensee stated that they have assumed a 14-minute diagnosis period and that the required time to perform the action is 14 minutes while the time available is greater than 75 minutes, which provides 47 minutes of margin.

3.30.5 Conclusion for Fire Area YD (Fire Zone 900)

Given the low combustible fuel loading and outdoor nature of the zone, it is unlikely that a fire would occur and damage cable ECD3–EXF6/2. In the unlikely event that a fire does occur and causes damage that necessitates the use of OMA #18, there is 47 minutes of margin available to provide assurance that safe shutdown capability will be maintained following the postulated fire events. The NRC staff finds that there is adequate defense-in-depth provided for Fire Zone 900 and that OMA #18 is acceptable for the purpose of providing the level of protection intended by the

regulation. Therefore, the NRC staff finds that an exemption from III.G.2 based on OMA #18 is granted for Fire Zone 900.

4.0 Feasibility and Reliability of the Operator Manual Actions

Based on Section 3.0 above, several areas where OMAs are credited were found acceptable. The OMAs credited in those areas were then evaluated for feasibility and reliability. This analysis postulates that OMAs may be necessary to assure SSD capability in addition to the traditional fire protection features described above. NUREG–1852, ''Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire,'' provides criteria and associated technical bases for evaluating the feasibility and reliability of post-fire OMAs in nuclear power plants. The following provides the licensee's justification for the OMAs specified in this exemption.

4.1 Bases for Establishing Feasibility

The licensee's analysis addresses factors such as environmental concerns, equipment functionality and accessibility, available indications, communications, portable equipment, personnel protection equipment, procedures and training, and staffing and demonstrations. In its submittals, the licensee stated that environmental factors such as radiation, lighting, temperature, humidity, smoke, toxic gas, noise, and fire suppression discharge were evaluated and found to not represent a negative impact on the operators' abilities to complete the OMAs. The licensee stated that normal radiation conditions within the areas of concern will not be adversely affected by the fire and subsequent spurious equipment operation. The licensee also confirmed that each of the OMA locations addressed by this exemption are provided with emergency lighting that illuminates both the potential ingress and egress paths and the component requiring OMA manipulation.

The licensee also confirmed that temperature and humidity conditions will not challenge the operators performing the OMAs. Additionally, the licensee indicated that heat and smoke or gas generation from a fire will not impact the operator performing the OMAs. For those specific cases in which it is necessary to reenter the fire area no less than 1 hour after the postulated fire event, the licensee stated that sufficient time is available to initiate smoke/heat venting through fixed ventilation systems and augmented by portable smoke ejectors, consistent with the Pre-Fire Plans, to ensure operator habitability to implement the necessary OMAs. In addition, the licensee stated that pre-staged self-contained breathing apparatus (SCBA), sufficient to equip the full operating crew, are available for deployment in response to post-fire environmental conditions.

The licensee stated that equipment credited for implementation of OMAs was reviewed to ensure it is accessible, available, and not damaged by the affects of the fire. Where ladders are required for access to components to perform OMAs, appropriate ladders are staged in accordance with plant procedures and the presence of these ladders is verified periodically in accordance with plant surveillance procedures. Any tools that are required in support of post-fire hot shutdown OMAs are pre-staged at the locations where they would be used. These consist of common tools such as wrenches, banding cutters, and pliers. Where special tools or equipment are required, the licensee stated that they are designated for post-fire cold shutdown repairs, and the necessary tools and supplies are pre-staged in designated locations. The staging of necessary tools is confirmed via periodic surveillance.

In addition, the licensee indicated that procedures are in place, in the form of fire response procedures, to ensure that clear and accessible instructions on how to perform the manual actions are available to the operators. The licensee stated that all of the requested OMAs are directed by plant procedures, and the operators are trained in the use of the procedures. Specifically, the licensee stated that post-fire operator manual actions are clearly defined in procedures 2–ONOP–FP–001 and 2–AOP–SSD–1. Most OMAs required for the lll.G.2 fire areas are directed by Off-Normal Operating Procedure 2–ONOP–FP–001. Where CCR controls and indications are not assured to be reliably operable, the licensee stated that sufficiently detailed guidance is provided in procedure 2–AOP–SSD–1 to direct the operators to an alternate component or operating method that is assured to be available and viable for the specific fire scenario under consideration. Initial and periodic requalification operator training is provided on these procedures, consistent with standard licensed and non-licensed operator training programs.

The licensee stated that key diagnostic instrumentation is expected to remain available in the CCR to alert operators to implement the contingency OMAs as credited in the IP2 Appendix R SSD Analysis. Key indicators that trigger the need for local operator intervention for the credited set of OMAs include not only the RCS and secondary system instrumentation, but also the failure of components to respond or reliably indicate status in the CCR. The licensee further stated that based on field notes compiled from simulator exercises in which bounding fire area scenarios were modeled, the available CCR instruments and indicators, combined with operator response in accordance with EOPs, AOPs, fire SSD procedures, and other supporting procedures, are sufficient to ensure timely diagnosis of conditions requiring the dispatch of operator(s) to perform the credited OMAs outside the CCR. With the exception of those OMAs found to lack adequate time margin, the NRC staff determined that diagnosis and initiation times, in conjunction with the available margin, were acceptable.

With regard to communications, the licensee stated that reliance is placed on radios for communication between plant operators during a post-fire shutdown event. Radio repeaters are located outside the protected area and are not subject to disruption caused by fire events within the protected area. The repeaters are also equipped with uninterruptible power supplies to ensure continued operation in the event of the loss of normal power to the buildings in which they are located. Field verifications of radio system functionality have validated that communications between the designated control and monitoring locations are feasible and reliable.

The licensee stated that the manual action sequences in all of the lll.G.2 areas are considered to be bounded by the sequences represented by alternate shutdown (lll.G.3) Fire Area A. With regard to staffing, the licensee stated that timed field walkthroughs of Abnormal Operating Procedure 2–AOP–SSD–1 have been performed to validate that the number of operators available on the watch staff (7) can safely accomplish all required actions within the required time period to meet Appendix R SSD performance goals. The licensee stated that the broad set of OMAs required in implementing alternate shutdown procedure 2–AOP–SSD–1 bounds the smaller set of manual actions credited for coping with lll.G.2 fire area scenarios and that most OMAs required for the lll.G.2 fire areas are directed by Off-Normal Operating Procedure 2–ONOP–FP–001.

Additionally, the licensee stated that post-fire OMAs have been validated through timed operator walkthroughs, using as the basis an enveloping

scenario addressed by 2–AOP–SSD–1. When utilizing 2–AOP–SSD–1, the most challenging set of local manual operator actions (number of actions and time sensitivity of actions) is presented to the operations shift crew, and this set of actions is considered to adequately bound the limited set of manual actions that are credited in 2–ONOP–FP–001. The licensee also stated that the timed walkthroughs of 2–AOP–SSD–1 have consistently demonstrated that the key SSD tasks (*e.g.,* restoration of RCS makeup; restoration of AFW to SGs; mitigation of key potential spurious actuation concerns) can be accomplished in a timely manner to meet the Appendix R SSD performance goals.

The licensee stated that none of the OMA operating locations are difficult to access, and the required operations are straightforward manual actions that do not require any special tools, processes, or unique personal capabilities. Specifically, the OMAs entail:

- Manual operation of valves (manual valves, as well as operation of air-operated valves and motor-operated valves via hand wheels or installed jacking devices).
- Local manual trip or closure of circuit breakers.
- Manual control of the turbine-driven AFW pump.

The licensee further stated that none of the requested OMAs involve complex instruction sets, the installation or removal of jumpers, or any actions requiring uniquely specialized knowledge or fine motor skills. The OMA task assignments are within the capability of any licensed operator or nuclear plant operator, as applicable to his or her responsibility set. As such, the challenge presented for completion of these basic tasks within the prescribed time limits is within the capability of the standard IP2 operating crew. The licensee further stated that in addition to the validation of key OMAs credited in alternate SSD procedure 2–AOP–SSD–1, the plant simulator was utilized to perform evaluations of bounding lll.G.2 fire scenarios, and based on the field notes compiled from these exercises, there is reasonable assurance that conditions requiring the implementation of the identified OMAs can be identified and mitigated in a sufficiently timely manner to ensure Appendix R performance goals are met. However, certain OMAs were found to lack adequate margin due to the prompt nature of the action or because the NRC staff concluded there was a lack of time available to perform an OMA where reentry to a fire area is required. These cases are indicated below.

4.2 Feasibility

The licensee's analysis demonstrates that, with exceptions, the OMAs can be diagnosed and executed within the amount of time available to complete them. The licensee's analysis also demonstrates that various factors, as discussed above, have been considered to address uncertainties in estimating the time available. The licensee stated that the credited OMAs have been demonstrated to be feasible through timed evolutions performed using a combination of simulator drills and dispatch of operators to simulate performance of the OMAs within the physical plant. In most cases, the OMAs are completed, with margin remaining, within the time constraints established by the supporting SSD thermal-hydraulic analyses. The licensee stated that the time values have been shown to be consistently achievable, and the operations resource demand required to support any one of the fire area scenarios is a fraction of the 7-operator complement available to support an SSD scenario. However, OMA #6 requires operators to reenter a fire area following a fire event to perform an OMA and the licensee failed to account for the 60-minute waiting period in their required time. Because of this, this OMA was determined to be infeasible and has been noted as such in the table below. The available margin is indicated as a negative number where an OMA credited in a particular area was found to be infeasible and therefore unreliable as well. Other OMAs were determined to be feasible but not reliable since only nominal margin is available to complete them.

The following table summarizes the ''required time'' versus ''available time'' for each OMA. The indicated ''required time'' is the time needed to complete all actions that may be required as a result of fire in each of the identified fire zones and includes diagnosis time, implementation time, and uncertainty time. The indicated ''available time'' is the time by which the action must be completed in order to meet the assumptions in plant analyses. The NRC staff finds that the required time to perform the actions is reasonable as the licensee has verified these times in simulator scenarios and by simulating performance in the plant. Where reentry to a fire area is required to perform an OMA, a 60-minute waiting period is also included in the required time and the diagnosis period for these instances was assumed to occur concurrent with the waiting period. Finally, the times noted below should be considered with the understanding that the manual actions are a fall back in the unlikely event that the fire protection defense-in-depth features are insufficient.

Fire area	Fire zones [1]	OMA ID [2]	OMA summary	Required time (min) [3]	Available time (min)	Available margin (min)
C	23	[4] 1	Implement EOP 2–FR–H.I	NA	NA	NA
		2	Operate turbine-driven 22AFW pump	82	>60	[5] >0
		3	Open 22 AFW pump steam supply isolation valves PCV–1310A and PCV–1310B..	19.5	>60	>40.5
		4	Operate TDAFW flow valves FCV–405A,B,C and/or D to align TDAFW to selected SGs.	82	>60	[5] >0
F	27A, 33A, 59A	5	Align Charging flow to RCS	74	75	[6] 1
	5A, 6, 7A, 22A, 27A	6	Align Charging Suction To RWST	78	75	[6] −3
	6, 7A	7	Transfer Inst. Buses 23/23A to alternate power.	7.5	30	22.5

Fire area	Fire zones [1]	OMA ID [2]	OMA summary	Required time (min) [3]	Available time (min)	Available margin (min)
H	70A, 71 A, 72A, 75A, 77A, 84A, 85A, 87A.	8	Align charging pump makeup path to RCS	28	75	47
	70A, 75A, 77A, 87A	9	Enable Alternate Safe Shutdown System Pneumatic Instruments.	13	34	21
		10	Enable Alternate Safe Shutdown System source range channel.	23	34	11
J	17,19 39A, 43A, 45A, 46A, 47A, 50A.	11	Trip breakers 52/5A and 52–SAC on Bus 5A and 52/6A and 52/TAO on Bus 6A and remove control power fuses.	10	60	50
	25, 39A, 43A, 46A, 50A, 270.	12	Transfer Inst. Buses 23/23A to alternate power.	7.5	30	22.5
	43A, 46A	13	Align charging pump suction source to RWST.	32	75	43
K	60A 65A	14	Transfer 21 AFW to Alternate Safe Shutdown System power source.	21.5	34	12.5
		15	Open 21 AFW recirc. bypass valve BFD–77.	9.5	34	24.5
P	1	16	Transfer 23 CCW pump to Alternate Safe Shutdown System power.	31	>60	29
		17	Start ARDG if normal power and offsite power are lost.	17	60	43
YD	900	18	Align charging pump makeup path to RCS	28	75	47

[1] Fire Areas are areas of fire origin; Indicated Fire Zones contain the cables or equipment whose damage due to fire may require implementation of the OMAs.
[2] Operator Action ID designators (1, 2, 3 *etc.*) were assigned by the NRR reviewer.
[3] Total of simulator-based diagnosis was added to the field-based time to travel to the OMA location, complete the OMA, confirm the action, and notify the CCR of completion as well as the 60-minute waiting period as discussed above.
[4] Action A—Implementation of EOP 2–FR–H.l is not a requested OMA since these are proceduralized control room actions– identified here for completeness only.
[5] Operators use procedure EOP 2–FR–H.1 to extend the available time.
[6] OMAs determined to be infeasible or unreliable.

4.3 Reliability

As stated in NUREG–1852, for a feasible action to be performed reliably, it should be shown that there is adequate time available to account for uncertainties not only in estimates of the time available, but also in estimates of how long it takes to diagnose and execute the OMAs (*e.g.,* as based, at least in part, on a plant demonstration of the action under non-fire conditions). To confirm reliability, for each fire area having the potential to initiate the need for an OMA, the licensee considered uncertainties associated with estimating how long it takes to diagnose and execute operator manual actions.

Where the licensee demonstrated that adequate margin was available, the required completion times noted in the table above provide reasonable assurance that the OMAs can reliably be performed under a wide range of conceivable conditions by different plant crews because the completion times, in conjunction with the available time margins associated with each action and other installed fire protection features, account for sources of uncertainty such as variations in fire and plant conditions, factors unable to be recreated in demonstrations and human-centered factors. As noted in the table above, several of the OMAs included in this review were found to be reliable because there is adequate time available to account for uncertainties not only in estimates of the time available, but also in estimates of how long it takes to diagnose a fire and execute the OMAs (*e.g.,* as based, at least in part, on a plant demonstration of the actions under non-fire conditions). However, OMA #6 was found to be infeasible and therefore unreliable as well. Other OMAs were determined to be feasible but not reliable since only nominal margin is available to complete them. The OMA found to be infeasible and unreliable is indicated by a negative available margin value in the table above and those OMAs found to be feasible but unreliable are those indicated by footnote #6 to the table above but with a positive available margin value.

4.4 Summary of Defense-in-Depth and Operator Manual Actions

In summary, the defense-in-depth concept for a fire in the fire areas included in the table below provides a level of safety that results in the unlikely occurrence of fires; rapid detection, control, and extinguishment of fires that do occur; and the protection of structures, systems, and components important to safety. For these particular fire zones and the OMAs credited in them and found acceptable in Sections 3.0 and 4.0 above, the licensee has provided preventative and protective measures in addition to feasible and reliable OMAs that together demonstrate the licensee's ability to preserve or maintain SSD capability in the event of a fire in the analyzed fire areas. The

remaining zones included in the licensee's request were found to provide an inadequate level of defense-in-depth or safety margin and as such the requested OMAs for these zones are not approved for permanent use. The table below summarizes which fire zones are granted exemptions from III.G.2.

Fire zone	Area of fire origin	Exemption approved for this fire zone
23	C	Previous exemption remains valid
5A	F	No
6	F	No
7A	F	No
22A	F	No
27A	F	No
33A	F	No
59A	F	No
70A	H	Yes
71A	H	Yes
72A	H	No
75A	H	No
77A	H	No
84A	H	No
85A	H	No
87A	H	No
17	J	Yes
19	J	No
25	J	No
39A	J	No
43A	J	No
45A	J	No
46A	J	No
47A	J	No
50A	J	No
270	J	No
60A	K	No
65A	K	No
1	P	Previous exemption remains valid
900	YD	Yes

4.5 Authorized by Law

This exemption would allow IP2 to rely on specific OMAs, as discussed in Sections 3.0 and 4.0 above, in conjunction with the other installed fire protection features, to ensure that at least one means of achieving and maintaining safe shutdown remains available during and following a postulated fire event, as part of its fire protection program, in lieu of meeting the requirements specified in III.G.2 for a fire in the analyzed fire zones. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of this exemption, as limited by the staff's analysis will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

4.6 No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR part 50, Appendix R, Section III.G is to ensure that at least one means of achieving and maintaining safe shutdown remains available during and following a postulated fire event. Based on the above, no new accident precursors are created by the use of the specific OMAs, in conjunction with the other installed fire protection features, in response to a fire in the analyzed fire zones. Therefore, the probability of postulated accidents is not increased. Also based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

4.7 Consistent With Common Defense and Security

This exemption would allow IP2 to credit the use of the specific OMAs, in conjunction with the other installed fire protection features, in response to a fire in the analyzed fire zones, discussed above, in lieu of meeting the requirements specified in III.G.2. This change to the operation of the plant has no relation to security issues. Therefore, the common defense and security is not diminished by this exemption.

4.8 Special Circumstances

One of the special circumstances described in 10 CFR 50.12(a)(2)(ii) is that the application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR part 50, Appendix R, Section III.G is to ensure that at least one means of achieving and maintaining safe shutdown remains available during and following a postulated fire event. While the licensee does not comply with the explicit requirements of Section III.G.2, the approved OMAs, in conjunction with the other installed fire protection features, provide a method to ensure that a train of equipment necessary to achieve and maintain safe shutdown of the plant will be available in the event of a fire in these fire zones. The NRC staff concludes that the application of the regulation is not necessary to achieve the underlying purpose of the rule for the plant configurations approved in this exemption. Therefore special circumstances exist, as required by 10 CFR 50.12(a)(2)(ii), that warrant the issuance of this exemption.

5.0 Conclusion

Based on all of the features of the defense-in-depth concept discussed for the fire zones listed in Section 4.4 of this exemption, the NRC staff concludes that the use of specific OMAs found acceptable in Sections 3.0 and 4.0 of this evaluation, in these particular instances and in conjunction with the other installed fire protection features, in lieu of strict compliance with the requirements of III.G.2, will allow IP2 to meet the underlying purpose of the rule for those fire zones. The use of other specific OMAs in certain fire zones were found to be not acceptable, as discussed in Sections 3.0 and 4.0 of this evaluation, and as such, are not approved by this exemption.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security and that special circumstances are present to warrant issuance of the exemption. Therefore, the Commission hereby grants Entergy an exemption from the requirements of Section III.G.2 of Appendix R of 10 CFR part 50, to utilize the OMAs approved above at IP2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (76 FR 74832).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this first day of February, 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–3124 Filed 2–9–12; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26; NRC–2011–0110]

Pacific Gas and Electric Company, Diablo Canyon Independent Spent Fuel Storage Installation; Notice of Issuance of Amendment to Materials License No. SNM–2511

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of license amendment.

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, Mail Stop EBB–3D–02M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Telephone: 301–492–3325; email: *john.goshen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 22, 2004, the U.S. Nuclear Regulatory Commission (NRC) issued NRC Materials License No. SNM–2511 to the Pacific Gas and Electric Company (PG&E) for the Diablo Canyon (DC) Independent Spent Fuel Storage Installation (ISFSI), located at the DC Nuclear Power Plant, Unit Nos. 1 and 2 site in San Luis Obispo County, California. The license authorizes PG&E to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials resulting from the operation of the DC Nuclear Power Plant, Unit Nos. 1 and 2 in an ISFSI at the power plant site for a term of 20 years. The NRC staff published a Notice of Issuance of Environmental Assessment and Finding of No Significant Impact (EA/FONSI) for the approval of DC ISFSI license in the **Federal Register** on October 30, 2003 (68 FR 61838) in accordance with the National Environmental Policy Act, and in conformance with the applicable requirements of Title 10 of the Code of Federal Regulations (10 CFR) part 51. Additionally, the NRC published a supplement to this EA/FONSI on September 10, 2007 (72 FR 51687), in response to the decision of the United States Court of Appeals for the Ninth Circuit in *San Luis Obispo Mothers for Peace* v. *NRC,* 449 F.3d 1016 (9th Cir. 2006), and a related addendum on November 15, 2007 (72 FR 64252).

By letter dated January 31, 2011, as supplemented June 8, July 28, September 15, and November 22, 2011, PG&E submitted license amendment request (LAR) 11–001 to the NRC to amend Materials License No. SNM–2511 for the DC ISFSI in accordance with 10 CFR part 72. PG&E's application requested that the ISFSI Technical Specifications (TS) be revised as follows:

1. TS 1.1, ''Definitions,''—revise to reflect the addition of high burnup fuel (HBF) selection criteria and the addition of neutron source assemblies (NSAs), and instrument tube tie rods (ITTRs).

2. TS 2.0, ''Approved Contents,''—revise Tables 2.1–1 through 2.1–7, and 2.1–10 to reflect the addition of HBF selection criteria and the addition of NSAs and ITTRs. TS 2.0, ''Approved Contents,'' Table 2.1–7—revise Fuel Assembly Cooling and Maximum Decay Heat (Uniform Fuel loading) for a MPC–32 to limit the decay heat load to 750 W per assembly for a canister containing HBF.

3. TS 2.0, ''Approved Contents,''—revise to add new TS 2.3 and associated Table 2.3–1 to provide alternative calculations for burnup limits for fuel assemblies in a MPC–32 to allow the storage of HBF.

4. TS 3.1.1, ''Multi-Purpose Canister (MPC),''—revise to eliminate the vacuum drying option which is not allowed for HBF and to add a reference temperature of 70 °F for the MPC Helium backfill pressure range.

5. TS 3.1.2, ''Spent Fuel Storage Cask (SFSC) Heat Removal System,''—revise to allow the HI–STORM Shortened Anchored (100SA) overpack to be considered operable with up to 50 percent vent blockage (although removal of any blockage is still required on discovery).

6. TS 3.1.4, ''Supplemental Cooling System,''—added to provide the conditions and criteria for the SCS.

7. TS 4.1.2b, ''Design Features Important to Criticality Control,''—revise to change the B4C content in METAMIC to ≤ 33.0 wt%.

8. TS 5.1.3b, ''MPC and SFSC Loading, Unloading, and Preparation Program,''—revise to delete the requirement for maintaining the annulus full during vacuum drying and to restore the requirement for maintaining the annulus full during reflood (unloading).

LAR 11–001 also proposes to revise the licensing basis from that documented in the DC ISFSI Final Safety Analysis Report Update (FSARU) to:

9. Upgrade the thermal analysis methodology to a three dimensional (3D) Computational Fluid Dynamics (CFD) model,

10. Remove the assumption of 100% fuel failure coincident with 100% vent blockage,

11. Change of some allowed component temperatures in the thermal evaluation (peak cladding, concrete, overpack metal, transfer cask lid neutron shielding),

12. Reduce the required torque criteria for the MPC lift cleats, and

13. Add a new accident for loss of SCS to the design criteria for the SCS.

In accordance with 10 CFR 72.16, a Notice of Docketing and opportunity to request a hearing was published in the **Federal Register** on May 20, 2011 (76 FR 29280). On January 19, 2012, the NRC approved and issued Amendment No. 2 to Materials License No. SNM–2511, held by PG&E for the receipt, possession, transfer, and storage of spent fuel at the Diablo Canyon ISFSI. Amendment No. 2 was effective as of the date of issuance. Pursuant to 10 CFR 72.46(d), the NRC is providing notice of the action taken.

Amendment No. 2 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. As required by the Act and the NRC's rules and regulations in 10 CFR chapter I, the NRC has made appropriate findings, which are set forth in Amendment No. 2 Safety Evaluation Report (SER). Also as described in the SER, the NRC determined that issuance of Amendment No. 2 meets the criteria specified in 10 CFR 51.22(c)(11) for a categorical exclusion. Thus, the preparation of an environmental assessment or an environmental impact statement is not required.

II. Further information

The NRC has prepared a SER that documents the staff's review and evaluation of the amendment. In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents related to this action, including the application for amendment and supporting documentation and the SER, are available electronically at the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS Accession Numbers for the applicable documents are:

Document	Date	ADAMS accession No.
License Amendment Request	January 31, 2011	ML110400377
Supplement to License Amendment Request	June 8, 2011	ML11173A228
Supplement No. 2 to License Amendment Request	July 28, 2011	ML11216A208
Response to First Request for Additional Information	September 15, 2011	ML11262A270
Response to Second Request for Additional Information	November 22, 2011	ML11333A061
License Amendment No. 2 Issuance Package	January 19, 2012	ML120260361

Document	Date	ADAMS accession No.
Safety Evaluation Report	January 19, 2012	ML120260386

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee.

Dated at Rockville, Maryland, this 19th day of January, 2012.

For the Nuclear Regulatory Commission.

Michael D. Waters,

Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–3123 Filed 2–9–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–120; Order No. 1198]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Santa Fe, Missouri post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Deadline for Petitioner's Form 61:* February 22, 2012, 4:30 p.m., eastern time; *deadline for answering brief in support of the Postal Service:* March 13, 2012, 4:30 p.m., eastern time. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received two petitions for review of the Postal Service's determination to close the Santa Fe post office in Santa Fe, Missouri. The first petition for review received January 18, 2012, was filed by Valena Booth. The second petition for review received January 20, 2012, was filed by Robert F. Young. The earliest postmark date is January 6, 2012.

The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–120 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than February 22, 2012.

Issue apparently raised. Petitioners contend that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The due date for any responsive pleading by the Postal Service to this Notice is February 13, 2012.

Notwithstanding the Postal Service's determination to close this post office, on December 15, 2011, the Postal Service advised the Commission that it ''will delay the closing or consolidation of any Post Office until May 15, 2012''.[1] The Postal Service further indicated that it ''will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.'' *Id.* It stated that the only ''Post Offices'' subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. It affirmed that it ''will not close or consolidate any other Post Office prior to May 16, 2012.'' *Id.* Lastly, the Postal Service requested the Commission ''to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.'' *Id.*

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. 404(d)(5).

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to

[1] United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, (Notice).

file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before February 28, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. Any responsive pleading by the Postal Service to this notice is due no later than February 13, 2012.

2. The procedural schedule listed below is hereby adopted.

3. Pursuant to 39 U.S.C. 505, Manon Boudreault is designated officer of the Commission (Public Representative) to represent the interests of the general public.

4. The Secretary shall arrange for publication of this notice and order in the **Federal Register.**

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

January 18, 2012	Filing of Appeal.
February 2, 2012	Deadline for the Postal Service to file the applicable administrative record in this appeal.
February 13, 2012	Deadline for the Postal Service to file any responsive pleading.
February 28, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
February 22, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
March 13, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
March 28, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
April 4, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
May 4, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2012–3001 Filed 2–9–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Notice of Availability: Programmatic Environmental Assessment for Mail Processing Network Rationalization Initiative (Formerly Known as the ''Network Optimization'' Initiative), Nationwide

AGENCY: Postal Service.

ACTION: Notice of availability of a Programmatic Environmental Assessment.

SUMMARY: To comply with the requirements of the National Environmental Policy Act (NEPA), the Postal Service has prepared and is making available a Programmatic Environmental Assessment (PEA) for the Mail Processing Network Rationalization Initiative (the ''Proposed Action''), which is national in scope. This PEA evaluated the environmental impacts of the Proposed Action versus taking No Action. Based on the results of the PEA, the Postal Service has issued a Finding of No Significant Impact (FONSI) indicating that the Proposed Action will not have a significant impact on the environment.

DATES: The PEA and FONSI are available as of February 6, 2012.

ADDRESSES: Interested parties may direct questions or requests for additional information, including requests for copies of the PEA and FONSI documents, to: Mr. Thomas G. Day, Chief Sustainability Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 2737, Washington, DC 20260; (202) 268–7488.

SUPPLEMENTARY INFORMATION: The Postal Service is undertaking a Mail Processing Network Rationalization Initiative to create a more streamlined processing and distribution network using fewer facilities to handle an existing and projected decline in mail volumes. The proposal under consideration includes possible closure or consolidation of mail processing for approximately 250 processing facilities, reducing mail processing equipment by as much as 50 percent, dramatically decreasing the nationwide transportation network, adjusting the mail processing workforce size by as many as 35,000 positions, and revising service standards for mail services, including the elimination of the expectation of overnight service for significant portions of First-Class Mail and Periodicals.

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, the Postal Service's implementing procedures at 39 CFR part 775, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Postal Service has prepared a Programmatic Environmental Assessment (PEA) to evaluate the environmental impacts of the Proposed Action versus the No Action Alternative. Based on the results of the PEA, the Postal Service has issued a Finding of No Significant Impact (FONSI) indicating that the Proposed Action will not have a significant impact on the environment.

The No Action Alternative was analyzed as an alternative to the Proposed Action. Based upon the No Action Alternative, the Postal Service would not implement the Mail Processing Network Rationalization Initiative. Postal Service mail processing operations would continue essentially as is, at current capacity. No consolidation or closure of mail processing facilities, modification of current service standards for First-Class Mail and Periodicals, scaling back of the nationwide transportation network, or workforce adjustments would occur. Under the No Action Alternative the Postal Service would maintain current operating methods and protocols and would continue to operate at a budget deficit due to insufficient income to maintain current operating expenses.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–3082 Filed 2–9–12; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66326; File No. SR–BYX–2012–005]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

February 6, 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 February 1, 2012, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule in order to accommodate an additional variation of the Exchange's ''TRIM'' routing strategy. As defined in BYX Rule 11.13(a)(3)(G), TRIM is a routing option under which an order checks the System [6] for available shares and then is sent to destinations on the System routing table. Accordingly, the Exchange's current TRIM routing strategy will check the Exchange's order book and then route to various venues on the Exchange's routing table, including NASDAQ OMX BX, Inc. (''NASDAQ BX''), EDGA EXCHANGE, Inc. (''EDGA''), the New York Stock Exchange LLC (''NYSE''), BATS Exchange, Inc. (''BZX Exchange'') and certain alternative trading systems available through the Exchange's ''DRT'' strategy (''DRT Venues'').[7] In order to provide an additional option related to the TRIM routing strategy to Exchange Users,[8] the Exchange is introducing TRIM2, which will route to fewer venues than the full list of TRIM routing venues.[9] Specifically, TRIM2 will limit the routing table to NASDAQ BX, EDGA and DRT Venues.

All pricing currently applicable to the TRIM routing strategy will apply to TRIM2, with the exception of TRIM2 orders executed at NASDAQ BX. In order to fund the development and infrastructure cost of creating and maintaining an additional TRIM routing strategy, the Exchange proposes to provide a lower rebate for executions pursuant to TRIM2 than the rebate actually received for orders executed at NASDAQ BX, which are passed on in full for executions resulting from TRIM routing. Specifically, the Exchange proposes to provide a rebate of $0.0010 per share for executions at NASDAQ BX that result from TRIM2 routing, rather than the full rebate of $0.0014 per share.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[10] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange also notes that with respect to the changes proposed in this filing, although routing options are available to all Users, Users are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different venues or can utilize a myriad of other routing solutions that are available to market participants.

The Exchange believes that the proposed rebates and fees for the TRIM2 routing option are reasonable in that they are equivalent to the fees charged by the Exchange for the TRIM routing strategy, with the exception of executions at NASDAQ BX, as described above. As such, the Exchange believes that the proposed non-standard routing fees are competitive, fair and reasonable, and non-discriminatory in that they are generally designed to mirror the rebate or fee applicable to the execution if such routed orders were executed directly by the Member at each applicable venue. The Exchange believes that the slightly lower rebate provided for TRIM2 executions at NASDAQ BX is reasonable in order to help the Exchange cover the cost of developing and maintaining an additional routing strategy for Users of the Exchange. The Exchange also

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] As defined in BYX Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

[7] As set forth in BYX Rule 11.13(a)(3)(E), DRT is a routing option in which the entering firm instructs the System to route to alternative trading systems included in the System routing table. Unless otherwise specified, DRT can be combined with and function consistent with all other routing options.

[8] As defined in BYX Rule 1.5(cc), a User is any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.

[9] *See also* SR–BYX–2012–004, available at *www.batstrading.com/regulation.*

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

believes that the proposed rebates and fees for TRIM2 are fair and equitable and not unreasonably discriminatory in that they apply equally to all Exchange Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and Rule 19b–4(f)(2) thereunder,[13] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2012–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2012–005. This file number should be included on the 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2012–005 and should be submitted on or before March 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3093 Filed 2–9–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66327; File No. SR–BATS–2012–008]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

February 6, 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 February 1, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 1, 2012.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the ''Equities Pricing'' section of its fee schedule in order to accommodate two additional variations of the Exchange's ''TRIM'' routing strategy. As defined in BATS Rule 11.13(a)(3)(G), TRIM is a routing option under which an order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

checks the System[6] for available shares if so instructed by the entering User[7] and then is sent to destinations on the System routing table. Accordingly, the Exchange's current TRIM routing strategy will optionally check the Exchange's order book and then route to various venues on the Exchange's routing table, including NASDAQ OMX BX, Inc. (''NASDAQ BX''), BATS Y-Exchange, Inc. (''BYX Exchange''), EDGA EXCHANGE, Inc. (''EDGA''), the New York Stock Exchange LLC (''NYSE'') and certain alternative trading systems available through the Exchange's ''DRT'' strategy (''DRT Venues'').[8] In order to provide additional options related to the TRIM routing strategy to Exchange Users, the Exchange is introducing TRIM2 and TRIM3, both of which will route to fewer venues than the full list of TRIM routing venues.[9] Specifically, TRIM2 will limit the routing table to NASDAQ BX, BYX Exchange, EDGA and DRT Venues. TRIM3 will further limit the routing table to NASDAQ BX, BYX Exchange and DRT Venues.

All pricing currently applicable to the TRIM routing strategy will apply to TRIM2 and TRIM3, with the exception of TRIM2 and TRIM3 orders executed at NASDAQ BX. In order to fund the development and infrastructure cost of creating and maintaining additional TRIM routing strategies, the Exchange proposes to provide a lower rebate for executions pursuant to TRIM2 and TRIM3 than the rebate actually received for orders executed at NASDAQ BX, which are passed on in full for executions resulting from TRIM routing. Specifically, the Exchange proposes to provide a rebate of $0.0010 per share for executions at NASDAQ BX that result from TRIM2 or TRIM3 routing, rather than the full rebate of $0.0014 per share.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[10] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange also notes that with respect to the changes proposed in this filing, although routing options are available to all Users, Users are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different venues or can utilize a myriad of other routing solutions that are available to market participants.

The Exchange believes that the proposed rebates and fees for the TRIM2 and TRIM3 routing options for the Exchange are reasonable in that they are equivalent to the fees charged by the Exchange for the TRIM routing strategy, with the exception of executions at NASDAQ BX, as described above. As such, the Exchange believes that the proposed non-standard routing fees are competitive, fair and reasonable, and non-discriminatory in that they are generally designed to mirror the rebate or fee applicable to the execution if such routed orders were executed directly by the Member at each applicable venue. The Exchange believes that the slightly lower rebate provided for TRIM2 and TRIM3 executions at NASDAQ BX is reasonable in order to help the Exchange cover the cost of developing and maintaining additional routing strategies for Users of the Exchange. The Exchange also believes that the proposed rebates and fees for TRIM2 and TRIM3 are fair and equitable and not unreasonably discriminatory in that they apply equally to all Exchange Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2) thereunder,[13] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2012–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2012–008. This file number should be included on the 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

[6] As defined in BATS Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

[7] As defined in BATS Rule 1.5(cc), a User is any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.

[8] As set forth in BATS Rule 11.13(a)(3)(E), DRT is a routing option in which the entering firm instructs the System to route to alternative trading systems included in the System routing table. Unless otherwise specified, DRT can be combined with and function consistent with all other routing options.

[9] *See also* SR–BATS–2012–007, available at *www.batstrading.com/regulation.*

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2012–008 and should be submitted on or before March 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3094 Filed 2–9–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66328; File No. SR–FINRA–2012–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Rule Cross-References Within Certain FINRA Rules

February 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is in the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook'').[4] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references to reflect changes adopted in the Consolidated FINRA Rulebook. In this regard, the proposed rule change would update references in FINRA Rules 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities), 8120 (Definitions), and 9110 (Application) that are needed as the result of Commission approval of a recent FINRA proposed rule change.[5]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change on February 21, 2012, the date on which the previously approved rule change will also be implemented.[6]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 65599 (October 20, 2011), 76 FR 66344 (October 26, 2011) (Order Approving File No. SR–FINRA–2011–043).

[6] *See Regulatory Notice* 12–04 (January 2012).

[7] 15 U.S.C. 78*o*–3(b)(6).

19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

FINRA has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is designed to provide greater clarity to FINRA members and the public regarding FINRA's rules. In addition, waiver of the delay will allow the proposal to be implemented on a date on which previously approved rule changes will also be implemented. Therefore, the Commission designates the proposal operative upon filing.[10]

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–FINRA–2012–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–007. This file number should be included on the 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2012–007 and should be submitted on or before March 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3126 Filed 2–9–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66334; File No. SR–NYSEArca–2011–94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change To List and Trade Shares of the ProShares Managed Futures Strategy Fund, ProShares Commodity Managed Futures Strategy Fund, and ProShares Financial Managed Futures Strategy Fund Under NYSE Arca Equities Rule 8.200

February 6, 2012.

I. Introduction

On December 5, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the ProShares Managed Futures Strategy Fund, ProShares Commodity Managed Futures Strategy Fund, and ProShares Financial Managed Futures Strategy Fund (each a ''Fund,'' and collectively, ''Funds'') under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on December 23, 2011.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of each of the Funds pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges.[4] Each Fund is a series of the ProShares Trust II (''Trust''), a Delaware statutory trust.[5] ProShare Capital Management LLC is the Trust's Sponsor (''Sponsor''), and Wilmington Trust Company is the Trust's trustee. Brown Brothers Harriman & Co. serves as the administrator, custodian, and transfer agent of the Funds (''Administrator''). SEI Investments Distribution Co. serves as distributor of the Shares.

The Funds and Principal Investment Strategies

The Funds seek to provide investment results (before fees and expenses) that correspond to the performance of the S&P Dynamic Futures Index (''DFI'' or ''Index'') or to a sub-index of the Index (''Sub-Index''). The ProShares Managed Futures Strategy seeks to provide investment results (before fees and expenses) that correspond to the performance of the DFI. The ProShares Commodity Managed Futures Strategy seeks to provide investment results (before fees and expenses) that correspond to the performance of the S&P Dynamic Commodities Futures Index (''DCFI''), a Sub-Index of the DFI. The ProShares Financial Managed Futures Strategy seeks to provide investment results (before fees and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66002 (December 19, 2011), 76 FR 80433 (''Notice'').

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[5] *See* the Trust's Registration Statement on Form S–1, dated November 29, 2011 (File No. 333–178212) relating to the Funds (''Registration Statement'').

expenses) that correspond to the performance of the S&P Dynamic Financial Futures Index (''DFFI''), another Sub-Index of the DFI.

The Index and each Sub-Index were developed by Standard & Poor's and are long/short rules-based investable indexes designed to attempt to capture the economic benefit derived from both rising and declining trends in futures prices.[6] The Index is composed of unleveraged positions in U.S. exchange-traded futures contracts on sixteen different tangible commodities (''Commodities Futures Contracts''), as well as U.S. exchange-traded futures contracts on eight different financials, such as major currencies and U.S. Treasury securities (''Financials Futures Contracts,'' and together with the Commodities Futures Contracts, collectively, ''Index Components'').[7] Commodities Futures Contracts and Financials Futures Contracts each comprise a Sub-Index of the Index: the DCFI and the DFFI, respectively (collectively, ''Sub-Indexes'').

In order to achieve the investment objective of the Funds, the Sponsor will invest in: (1) Exchange-traded futures contracts of the type comprising the Index or Sub-Indexes, as applicable (''Futures Contracts''); and/or (2) under limited circumstances (as further described herein), swap agreements whose value is derived from the level of the Index, a Sub-Index, one or more Futures Contracts, or, in the case of currency-based Financials Futures Contracts, the exchange rates underlying such Financials Futures Contracts. Each Fund may also invest in cash or cash equivalents, such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes, and repurchase agreements collateralized by government securities) that may serve as collateral for the Futures Contracts or swap agreements. The Sponsor does not expect the Funds to invest directly in any commodity or currency.

Each Fund seeks to achieve its investment objective by investing, under normal market conditions, in exchange-traded Futures Contracts. In the event position accountability rules or position limits with respect to a Futures Contract is reached with respect to a Fund, the Sponsor may, in its commercially reasonable judgment, cause such Fund to obtain exposure through swaps whose value is derived from the level of the Index, a Sub-Index, one or more Futures Contracts, or, in the case of currency-based Financials Futures Contracts, the exchange rates underlying such Financials Futures Contracts, or invest in swaps if such instruments tend to exhibit trading prices or returns that correlate with the Index, the Sub-Indexes, or any Futures Contract and will further the investment objective of the Funds.[8] The Funds may also invest in swaps if the market for a specific Futures Contract experiences emergencies (*e.g.,* natural disaster, terrorist attack, or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) that would prevent the Funds from obtaining the appropriate amount of investment exposure to the affected Futures Contracts directly.[9]

The Index and Sub-Indexes

The Index is composed of the Index Components, representing unleveraged long or short positions in U.S. exchange-traded futures contracts in the commodity and financial markets.[10] The Index Components are formed into ''sectors'' of one or more contracts with similar characteristics. Index Components within each sector are chosen based on fundamental characteristics and liquidity. The Commodities Futures Contracts comprise the DCFI as described below, and weightings of the Commodities Futures Contracts are based on generally known world production levels, as adjusted to limit the impact of the energy sector. The Financials Futures Contracts comprise the DFFI, as described below, and weightings of the Financials Futures Contracts are based on, but not directly proportional to, gross domestic product.

The positions the Index (and accordingly, each Sub-Index) takes in the Index Components are not long-only, but are set by sector, long, short or, in the case of Energy, flat based on the relation of the current aggregate price input of the Index Components in a particular sector with a seven-month weighted moving average of the aggregate price inputs of the same Index Components. For the Index and the DCFI, the sector weights will vary based on whether Energy is positioned long or flat. If Energy is flat, its weight is redistributed pro-rata among the other sectors. Since the DFFI has no commodity exposure, the weights of the sectors and the Index Components that comprise it are not impacted by the long or flat positioning of the Energy sector.

For the Index, if Energy is positioned ''long,'' the initial Index weights, together with information about the exchange and trading hours for each Futures Contract, are as follows:

Index weights with energy ''long''						*Exchange*	Trading hours [11]
Sub-Index	*Weight* (%)	*Sector*	*Weight* (%)	*Component*	*Weight* (%)		
DCFI	50	Energy	14.12	Light Crude	10.20	NYMEX (CME)	6 p.m.–5:15 p.m. next day.
				Heating Oil	1.54	NYMEX (CME)	6 p.m.–5:15 p.m. next day.
				RBOB Gasoline	1.40	NYMEX (CME)	6 p.m.–5:15 p.m. next day.

[6] Standard & Poor's is not a broker-dealer, is not affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index and Sub-Indexes.

[7] The Index Components are traded on the Chicago Mercantile Exchange, Inc. (''CME''), COMEX (a division of CME), Chicago Board of Trade (''CBOT,'' a division of CME), NYMEX (a division of CME), and ICE Futures US (''ICE'') (collectively, ''Futures Exchanges'').

[8] To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

[9] The Sponsor will attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty and will take various steps to limit counterparty credit risk.

[10] As set forth in the Index weighting scheme example below, the commodities portion of the Index consists of multiple commodity sectors (*e.g.,* Energy, Industrial Metals) and each sector is assigned a percentage sector weight. Each sector, in turn, consists of one or more components, each with an assigned component weight. Similarly, the financial markets portion of the Index consists of multiple foreign currency and U.S. Treasury sectors (*e.g.,* Australian Dollar and U.S. Treasury Notes), each with an assigned sector weight. Each such sector has one component, with an assigned component weight.

Index weights with energy "long"						Exchange	Trading hours [11]
Sub-Index	Weight (%)	Sector	Weight (%)	Component	Weight (%)		
				Natural Gas	0.98	NYMEX (CME)	6 p.m.–5:15 p.m. next day.
		Industrial Metals	5.02	Copper	5.02	COMEX (CME)	6 p.m.–5:15 p.m. next day.
		Precious Metals	3.79	Gold	3.22	COMEX (CME)	6 p.m.–5:15 p.m. next day.
				Silver	0.57	COMEX (CME)	6 p.m.–5:15 p,m, next day
		Livestock	5.27	Lean Hogs	2.04	CME	** [12]
				Live Cattle	3.23	CME	** [13]
		Grains	13.85	Corn	5.75	CBOT (CME)	7pm–8:15 a.m.; 10:30 a.m.–2:15 p.m.
				Soybeans	3.37	CBOT (CME)	7 p.m.–8:15 a.m.; 10:30 a.m.–2:15 p.m.
				Wheat	4.73	CBOT (CME)	7 p.m.–8:15 a.m.; 10:30 a.m.–2:15 p.m.
		Softs	7.95	Coffee	1.26	ICE	3:30 a.m.–2 p.m.
				Cocoa	0.42	ICE	4 a.m.–2 p.m.
				Sugar	3.58	ICE	3:30 a.m.–2 p.m.
				Cotton	2.69	ICE	9 p.m.–2:30 p.m. next day.
DFFI	50	Australian Dollar	1.67	Australian Dollar		CME	6 p.m.–5:15 p.m. next day.
		British Pound	3.08	British Pound		CME	6 p.m.–5:15 p.m. next day.
		Canadian Dollar	2.10	Canadian Dollar		CME	6 p.m.–5:15 p.m. next day.
		Euro	15.67	Euro		CME	6 p.m.–5:15 p.m. next day.
		Japanese Yen	7.31	Japanese Yen		CME	6 p.m.–5:15 p.m. next day.
		Swiss Franc	0.70	Swiss Franc		CME	6 p.m.–5:15 p.m. next day.
		U.S. Treasury Notes [14].	9.74	U.S. Treasury Notes		CBOT (CME)	6:30 p.m.–5 p.m. Next day.
		U.S. Treasury Bonds [15].	9.74	U.S. Treasury Bonds		CBOT (CME)	6:30 p.m.–5 p.m. Next day.
Totals	*100*		*100*		*100*		

For the DCFI, if Energy is positioned "flat," the initial Index weights will be as follows:

Index weights with energy "flat"					
Sub-Index	Weight (%)	Sector	Weight (%)	Component	Weight (%)
DCFI	41.78	Energy	0.00	Light Crude	0.00
				Heating Oil	0.00
				RBOB Gasoline	0.00
				Natural Gas	0.00
		Industrial Metals	5.84	Copper	5.84
		Precious Metals	4.41	Gold	3.75
				Silver	0.66
		Livestock	6.13	Lean Hogs	2.38
				Live Cattle	3.76
		Grains	16.13	Corn	6.70

[11] All times are Eastern time ("E.T."), inclusive of electronic and open outcry trading sessions, as applicable.

[12] Lean Hogs trade from 10:05 a.m. Monday to 2:55 p.m. Friday, with daily trading halts from 5 p.m. to 6 p.m.

[13] Live Cattle trade from 10:05 a.m. Monday to 2:55 p.m. Friday, with daily trading halts from 5 p.m. to 6 p.m.

[14] "U.S. Treasury Notes" refer to 10 year U.S. Treasury Note futures.

[15] "U.S. Treasury Bonds" refer to those futures with underlying bonds of a remaining term to call or maturity of 15–25 years.

Index weights with energy "flat"

Sub-Index	*Weight* (%)	*Sector*	*Weight* (%)	*Component*	*Weight* (%)
				Soybeans	3.92
				Wheat	5.51
		Softs	9.26	Coffee	1.47
				Cocoa	0.48
				Sugar	4.17
				Cotton	3.13
DFFI	58.22	Australian Dollar	1.94	Australian Dollar	1.94
		British Pound	3.59	British Pound	3.59
		Canadian Dollar	2.44	Canadian Dollar	2.44
		Euro	18.24	Euro	18.24
		Japanese Yen	8.51	Japanese Yen	8.51
		Swiss Franc	0.81	Swiss Franc	0.81
		U.S. Treasury Notes	11.34	U.S. Treasury Notes	11.34
		U.S. Treasury Bonds	11.34	U.S. Treasury Bonds	11.34
Totals	*100*		*100*		*100*

For the DCFI, if Energy is positioned ''long,'' the initial Sub-Index weightings would be as follows:

DCFI weights with energy "long"

Sector	*Weight* (%)	*Component*	*Weight* (%)
Energy	28.24	Light Crude	20.40
		Heating Oil	3.08
		RBOB Gasoline	2.80
		Natural Gas	1.96
Industrial Metals	10.04	Copper	10.04
Precious Metals	7.58	Gold	6.44
		Silver	1.14
Livestock	10.54	Lean Hogs	4.08
		Live Cattle	6.46
Grains	27.70	Corn	11.50
		Soybeans	6.74
		Wheat	9.46
Softs	15.90	Coffee	2.52
		Cocoa	0.84
		Sugar	7.16
		Cotton	5.38
Total	*100*		*100*

For the DCFI, if Energy is initially positioned ''flat,'' the weights would be as follows:

DCFI weights with energy "flat"

Sector	*Weight* (%)	*Component*	*Weight* (%)
Energy	0.00	Light Crude	0.00
		Heating Oil	0.00
		RBOB Gasoline	0.00
		Natural Gas	0.00
Industrial Metals	13.98	Copper	13.98
Precious Metals	10.56	Gold	8.99
		Silver	1.58
Livestock	14.69	Lean Hogs	5.69
		Live Cattle	8.99
Grains	38.61	Corn	16.04
		Soybeans	9.39
		Wheat	13.18
Softs	22.16	Coffee	3.53
		Cocoa	1.16

DCFI weights with energy "flat"			
Sector	Weight (%)	Component	Weight (%)
		Sugar	9.98
		Cotton	7.50
Total	100		100

Finally, for the DFFI, the initial weights would be as follows:

DFFI weights			
Sector	Weight (%)	Component	Weight (%)
Australian Dollar	3.34	Australian Dollar	3.34
British Pound	6.16	British Pound	6.16
Canadian Dollar	4.20	Canadian Dollar	4.20
Euro	31.34	Euro	31.34
Japanese Yen	14.62	Japanese Yen	14.62
Swiss Franc	1.40	Swiss Franc	1.40
U.S. Treasury Notes	19.48	U.S. Treasury Notes	19.48
U.S. Treasury Bonds	19.48	U.S. Treasury Bonds	19.48
Total	100		100

Sectors will be rebalanced monthly to the applicable weights, and the weighting of each individual Index Component within a particular sector will be rebalanced annually.

Energy's Short Exemption

If Energy receives a negative price signal (as determined by the weighted moving average, as discussed below), it is positioned flat (zero-weight) rather than short. This is due to the ''risk of ruin'' inherent in the Energy sector because of the concentration of supply in a relatively small number of production locales. If supply from these locales were to be disrupted (whether by war, terrorism, or other events), the price of the Energy sector within the Index and the DCFI is exposed to large scale price increases regardless of the current trend and position setting. This would expose the Index and the DCFI to significant, if not total, losses in such a circumstance. As such, the Energy sector is positioned flat in a negative price environment and the weight it would otherwise receive is redistributed pro rata among the other sectors of the Index and the DCFI, as applicable.

Determining the Long/Short Positioning of the Sectors

The rule for the Index and each Sub-Index regarding long or short positions is summarized as follows:

- Long positions are tracked when a sector's current aggregate 1-month price change is greater than or equal to the exponential average of the past seven monthly price inputs; and
- Short positions (or flat, in the case of Energy) are tracked when a sector's current 1-month price change is less than the exponential average of the past seven monthly price inputs.

Monthly positions are determined on the second to last DFI business day of the month (defined as the position determination date, or ''PDD'') when the monthly percentage change of an Index Component's price is compared to past monthly price changes, exponentially weighted to give greatest weight to the most recent return and least weight to the return seven months prior. The weighted sum of the percentage changes of all the Index Component prices equals the daily movement of the Index.

To create an exponential average for comparison, price inputs (percentage change from current and previous PDDs) are weighted per the schedule below. Due to this weighting methodology, current price movements are more important than those of the more distant past.

Number of months	Weight
7	2.32
6	3.71
5	5.94
4	9.51
3	15.22
2	24.34
1	38.95
SUM	100.00

Because this valuation is done on a sector basis, all the Index Components within a particular sector will be set long, short (or flat, in the case of Energy) upon each monthly rebalancing.

Sector Rebalancing

While sector weights are fixed and rebalanced back to their base weight monthly, Index Components that are part of a multi-component sector (energy, livestock, grains, and precious metals) are only reset back to their base weight within their sector during the first five business days of February. For example (assuming Energy is long), the Japanese Yen (a single component sector) and Grains (a multi-component sector) will rebalance to 6.85% and 11.16% of the Index respectively on the roll date, as described below. However, the individual components within the grains sector will only rebalance to their base weight at the beginning of the year. During the year, they ''float'' within the 11.16% Index Grains weighting. During this monthly rebalancing, the Index will also ''roll'' certain of its positions from the current contract to a contract further from settlement.[16]

[16] The Index is composed of Index Components, which are futures contracts. In order to maintain consistent exposure to the Index Components, each Index Component contract must be sold prior to its expiration date and replaced by a contract maturing at a specified date in the future. This process is known as rolling. Index Component contracts are rolled periodically. The rolls are implemented pursuant to a roll schedule over a five-day period from the first through the fifth Index business days

Continued

Additional details regarding the Trust, Funds, Shares, trading policies and investment strategies of the Funds, creations and redemption procedures, fees, investment risks, Index and Sub-Indexes, net asset value (''NAV'') calculation, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statement, as applicable.[17]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change to list and trade the Shares of the Funds is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[19] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[20] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. The daily closing Index level and the percentage change in the daily closing Index level for the Index and each Sub-Index will be publicly available from one or more major market data vendors. Data regarding the Index and each Sub-Index, updated every 15 seconds during the NYSE Arca Core Trading Session, is also available from Standard & Poor's on a subscription basis.[21] In addition, for each Fund, the Indicative Optimized Portfolio Value (''IOPV'') will be widely disseminated on a per Share basis by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session.[22] The IOPV will be updated during the NYSE Arca Core Trading Session when applicable Futures Exchanges are trading any Futures Contracts held by the Funds. However, the IOPV that will be disseminated between 2 p.m. E.T. and the close of the NYSE Arca Core Trading Session will be impacted by static values for certain Futures Contracts.[23] The NAV for the Funds linked to the DFI and DFFI will be calculated and disseminated daily by the Administrator at 3 p.m. E.T., and the NAV for the Fund linked to the DCFI will be calculated and disseminated daily at 2:30 p.m. E.T. The Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names, notional value (in U.S. dollars) and number of Futures Contracts or units of swaps held by a Fund, if any, cash equivalents and the amount of cash held in the portfolio of each Fund. Moreover, the Web site for the Funds and/or the Exchange will contain the following information: (a) The current NAV per Share and the prior business day's NAV per Share; (b) calculation of the premium or discount of the closing market price against the NAV per Share; (c) the prospectus; and (d) other applicable quantitative information. The Exchange also will disseminate on a daily basis via the CTA information with respect to the recent NAV and Shares outstanding and make available on its Web site daily trading volume of the Shares, closing prices of the Shares, and the NAV per Share. The intra-day, closing, and settlement prices of the Futures Contracts will also be readily available, as applicable, from the respective Futures Exchanges.[24]

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IOPV, the level of the Index (or Sub-Index), or the value of the underlying Futures Contracts occurs. If the interruption to the dissemination of the IOPV, the level of the Index (or Sub-Index), or the value of the underlying Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange also may halt trading in the Shares if unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[25] Public Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Participants, so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Participants. Accordingly, the Exchange represents that each investor will have

of the month. An Index business day is any day on which the majority of the Index Components are open for official trading and official settlement prices are provided, excluding holidays and weekends. The roll schedule is set forth in the Registration Statement.

[17] *See* Notice and Registration Statement, *supra* notes 3 and 5, respectively.

[18] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[21] In addition, several independent data vendors package and disseminate Index and Sub-Index data in various value-added formats. Data regarding the Index Components is available from the Web sites of the Futures Exchanges. Data regarding the commodities, currencies and Treasury securities underlying the Index Components is publicly available from various financial information service providers.

[22] According to the Exchange, several major market data vendors display and/or make widely available IOPVs published on CTA or other data feeds. For each Fund, the IOPV will be calculated by using the prior day's closing NAV of such Fund as a base and updating throughout the trading day changes in the value of each Fund's holdings.

[23] The value of the IOPV will be based on the underlying Futures Contracts. Once a particular Futures Contract closes for trading, a static value for that Futures Contract will be used to calculate the IOPV.

[24] *See supra* note 7.

[25] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in the Shares of the Funds will be subject to halts caused by extraordinary market volatility pursuant to the Exchange's circuit breaker rules in NYSE Arca Equities Rule 7.12. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

access to the current portfolio composition of the Funds through the Funds' Web site and/or at the Exchange's Web site. In addition, the Commission notes that Standard & Poor's is not a broker-dealer, is not affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index and Sub-Indexes. Lastly, the Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees, and trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders [26] acting as registered Market Makers [27] in Trust Issued Receipts to facilitate surveillance.

The Exchange has represented that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Funds will be subject to the criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto for initial and continued listing of the Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, including Trust Issued Receipts, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the Futures Exchanges, all of which are members of the Intermarket Surveillance Group (''ISG''). For components traded on exchanges, not more than 10% of the weight of a Fund's portfolio in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(5) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated, as well as during the Core Trading Session when the IOPV may be based in part on static underlying values; (b) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IOPV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) The anticipated minimum number of Shares for each Fund to be outstanding at the start of trading will be 100,000 Shares.

(7) For the initial and continued listing of the Shares, the Funds must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act.[28]

(8) The Exchange will obtain a representation (prior to listing the Shares of each Fund) from the Trust that the NAV per Share will be calculated daily and made available to all market participants at the same time.

This approval order is based on the Exchange's representations.[29]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [30] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–NYSEArca–2011–94) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3152 Filed 2–9–12; 8:45 am]

BILLING CODE 8011–01–P

[26] *See* NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

[27] *See* NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

[28] 17 CFR 240.10A–3.

[29] The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions, which is the responsibility of the Commodity Futures Trading Commission (''CFTC''). The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures, even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66335; File No. SR–EDGA–2012–03]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

February 6, 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 31, 2012, the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGA–2011–40,[4] the Exchange amended several routing options contained in Rule 11.9(b)(3) to allow Users [5] more discretion if shares remain unexecuted after routing. In particular, Rule 11.9(b)(3) was amended to provide that Users may elect that any remainder of an order be posted to the EDGX Exchange, Inc. (''EDGX'') for any of the routing options listed in the rule, except those listed.[6] As a result of this amendment, the Exchange proposes to make a corresponding amendment to Flag P of its fee schedule. The subject amendment provides a rebate of $0.0027 per share for any order that after passing through EDGA and other destinations adds liquidity to EDGX (including during the Pre-Opening Session [7] and Post-Closing Sessions) [8] and yields Flag P. This would occur as a result of the Member's order using any of the routing strategies listed in Rule 11.9(b)(3) where the residual of the order posts to EDGX.[9]

As a result of this change, the Exchange proposes to revise the description on the Flag P to broaden its applicability to several routing strategies, instead of just an EDGA-originated ROUC routing strategy. The Flag P is thus proposed to state ''Adds liquidity on EDGX, including pre & post market.''

The Exchange proposes to implement this amendment to its fee schedule on February 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes that the rebate for Flag P of $0.0027 per share is an equitable allocation of reasonable dues, fees, and other charges. First, the rebate is designed to incentivize Members to route through EDGA using any of the applicable strategies listed in Rule 11.9(b)(3), as discussed above, to reach multiple sources of liquidity on EDGA before routing to other destinations, and thereby potentially increases volume on EDGA to the extent an order using any of these routing strategies executes on EDGA. The routing strategy allows Members to reach multiple sources of liquidity by routing order flow through EDGA rather than going directly to various venues. The rebate provides Members with a flat rate of $0.0027 per share rebate if the particular routing strategy posts to EDGX and is later executed. When the Exchange's routing broker/dealer, Direct Edge ECN LLC d/b/a DE Route (''DE Route'') achieves certain tiers on EDGX using any of the applicable routing strategies in Rule 11.9(b)(3) that post residual on EDGX, it is able to pass through a better rebate than if it had not achieved a tier.[12] For example, if the Member had routed to EDGX directly and the order had added liquidity to EDGX, the Member could receive rebates ranging from $0.0023–$0.0034, depending on if a volume threshold were satisfied. [13] The $0.0027 per share rebate thus represents a rate in between these various tiered and non-tiered rebates provided for adding liquidity to EDGX. This allows EDGA Members to share in potential volume tier savings realized by DE Route when it achieves certain tiers.

This type of rate is also similar to EDGA's rate for removing liquidity from LavaFlow (Flag U). The standard removal rate of $0.0029 per share is reduced to $0.0023 per share for orders routed to LavaFlow that achieve certain volume thresholds, as EDGA Members are able to share in potential volume tier savings realized by EDGA when routing to LavaFlow.[14] This rebate is also comparable to other rebates offered by the Exchange that add liquidity, such as the ROOC [15] routing strategy, which yields Flags 8 and 9.[16] For Flags 8 and 9, the Exchange passes through the default rebate (*i.e.,* non-tier) from the primary listing market (*i.e.,* NYSE Arca, NYSE Amex) to Members because DE Route does not generally achieve a favorable tier rate. This rate is also consistent with the processing of similar routing strategies by EDGA's competitors where EDGA takes into account the rates that it is charged or rebated when routing to other low cost destinations.[17] Finally, as another example, when EDGA routes to a primary exchange's opening cross, (Flag O), the Exchange passes through the tier savings that DE Route achieves on an away exchange to its Members.[18] This tier savings takes the form of a cap of Members' fees at $10,000 per month for using Flag O.

The Exchange believes that the rebate is consistent with how other Exchanges rebate Members for routing through an affiliated Exchange. For example, when a Member removes liquidity from Nasdaq BX, it is rebated $0.0005 per share if it does not achieve any tiers, or $0.0014 per share if it does achieve certain tiers.[19] However, when the Member removes liquidity from Nasdaq BX by routing through Nasdaq OMX using any number of strategies such as SAVE/SOLV/CART, and removes liquidity from Nasdaq BX as a result, it is rewarded a higher rebate of $0.0014 per share.[20]

The Exchange believes that the rebate of $0.0027 is also reasonable as it is consistent with how other exchanges pass through charges or rebates for orders routed to a different exchange that add or remove liquidity. For example, when Nasdaq routes to Nasdaq PSX, Nasdaq passes back Nasdaq PSX's standard charge of $0.0027 per share. When NYSE Arca routes to NYSE, NYSE Arca passes back the standard NYSE rebate of $0.0015 per share. These charges or rebates generally

[4] *See* Securities Exchange Act Release No. 66231 (January 24, 2012), 77 FR 4605 (January 30, 2012).

[5] As defined in Rule 1.5(cc) [sic].

[6] Routing options listed in Rules 11.9(b)(3)(a) and (n)–(q) are not altered as a result of this amendment. The routing option in Rule 11.9(b)(3)(a) already posts to EDGX and no amendment to the rule was needed as no discretion is provided to the User. The routing options in Rules 11.9(b)(3)(n)–(q) do not have the option to post the remainder of an order to EDGX.

[7] As defined in EDGA Rule 1.5(s).

[8] As defined in EDGA Rule 1.5(r).

[9] This includes all routing strategies in Rule 11.9(b)(3), except for (n)–(q), that do not have the option to post the remainder of an order to EDGX.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] *See* EDGX fee schedule, footnote 1.

[13] *Id.*

[14] *See* footnote 6 of the EDGA fee schedule.

[15] *See* EDGA Exchange Rule 11.9(b)(3)(n).

[16] *See* the EDGA Fee Schedule where Flag 8 offers a rebate of $.0015 where a member routes an order to NYSE Amex using the ROOC routing strategy and adds liquidity, and Flag 9 offers a rebate of $.0021 where a member routes an order to NYSE Arca using the ROOC routing strategy and adds liquidity.

[17] *See also* BATS BZX fee schedule, describing Discounted Destination Specific Routing (''One Under'') to NYSE, NYSE ARCA and NASDAQ. See Securities Exchange Act Release No. 62858, 75 FR 55838 (September 14, 2010) (SR–BATS–2010–023) (modifying the BATS fee schedule in order to amend the fees for its BATS + NYSE Arca destination specific routing option to continue to offer a ''one under'' pricing model).

[18] *See* footnote 5 of the EDGA fee schedule.

[19] *See* Nasdaq OMX BX Rule 7018.

[20] *See* Nasdaq OMX Rule 7018.

approximate what the originating exchange receives from the exchange that is routed to plus or minus a certain differential. EDGA's pricing is consistent with this premise.

The Exchange believes that the proposed rebate is non-discriminatory in that it applies uniformly to all Members.

The Exchange also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [21] and Rule 19b–4(f)(2) [22] thereunder. At any time within 60 days of the filing of such 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–EDGA–2012–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2012–03. This file number should be included on the 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2012–03 and should be submitted on or before March 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3095 Filed 2–9–12; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 19b–4(f)(2).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13002 and #13003]

Alabama Disaster #AL–00040

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–4052–DR), dated 02/01/2012.

Incident: Severe Storms, Tornadoes, Straight-Line Winds, and Flooding.

Incident Period: 01/22/2012 through 01/23/2012.

Effective Date: 02/01/2012.

Physical Loan Application Deadline Date: 04/02/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 11/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/01/2012, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Chilton, Jefferson.

Contiguous Counties (Economic Injury Loans Only)

Alabama: Autauga, Bibb, Blount, Coosa, Dallas, Elmore, Perry, Saint Clair, Shelby, Tuscaloosa, Walker.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.125

	Percent
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13002B and for economic injury is 130030.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Jane M.D. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–3083 Filed 2–9–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13000 and #13001]

Nevada Disaster #NV–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Nevada dated 02/01/2012.

Incident: Washoe Drive Fire.

Incident Period: 01/19/2012 through 01/21/2012.

Effective Date: 02/01/2012.

Physical Loan Application Deadline Date: 04/02/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 11/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Washoe.

Contiguous Counties:

Nevada: Carson City, Churchill, Humboldt, Lyon, Pershing, Storey.

California: Lassen, Modoc, Nevada, Placer, Sierra.

Oregon: Harney, Lake.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.125
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13000 5 and for economic injury is 13001 0.

The States which received an EIDL Declaration # are Nevada, California, Oregon.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 1, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–3086 Filed 2–9–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13006 and #13007]

Alaska Disaster #AK–00023

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4054–DR), dated 02/02/2012.

Incident: Severe Storm.

Incident Period: 11/15/2011 through 11/17/2011.

Effective Date: 02/02/2012.

Physical Loan Application Deadline Date: 04/02/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 11/02/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/02/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kenai Peninsula Borough.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13006B and for economic injury is 13007B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Jane M.D. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–3087 Filed 2–9–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12848 and #12849]

Texas Disaster Number TX–00382

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4029–DR), dated 09/21/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 through 12/31/2011.

Effective Date: 02/01/2012.

Physical Loan Application Deadline Date: 11/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of TEXAS, dated 09/21/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bosque.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Jane M. D. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–3088 Filed 2–9–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13004 and #13005]

Utah Disaster #UT–00011

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Utah (FEMA–4053–DR), dated 02/01/2012.

Incident: Severe Storm.

Incident Period: 11/30/2011 through 12/01/2011.

Effective Date: 02/01/2012.

Physical Loan Application Deadline Date: 04/02/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 11/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/01/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Davis.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13004B and for economic injury is 13005B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Jane M.D. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–3089 Filed 2–9–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12909 and #12910]

Virginia Disaster Number VA–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4042–DR), dated 11/04/2011.

Incident: Earthquake.

Incident Period: 08/23/2011 through 10/25/2011.

Effective Date: 02/01/2012.

Physical Loan Application Deadline Date: 03/05/2012.

EIDL Loan Application Deadline Date: 08/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of Virginia, dated 11/04/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans) Albemarle, King George.

Contiguous Counties: (Economic Injury Loans Only) Virginia:

Augusta, Charlottesville City, Essex, Nelson, Rockingham, Westmoreland.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Jane M. D. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–3084 Filed 2–9–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7794]

Culturally Significant Objects Imported for Exhibition Determinations: ''Nomads and Networks: The Ancient Art and Culture of Kazakhstan''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Nomads and Networks: The Ancient Art and Culture of Kazakhstan,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Institute for the Study of the Ancient World, New York University, New York, New York, from on or about March 6, 2012, until on or about June 3, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public

Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 6, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–3195 Filed 2–9–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2008–0259]

Agency Requests for Renewal of a Previously Approved Information Collection(s): Exemption From Passenger Tariff-Filing Requirements in Certain Instances and Mandatory Electronic Filing of Residual Passenger Tariffs

AGENCY: Office of the Secretary of Transportation (OST), Pricing & Multilateral Affairs Division, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT), OST, Pricing & Multilateral Affairs Division invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew an existing information collection. The collection involves tariff filings containing changes to passenger fares and related rules in a limited number of international markets that have not been exempted from such filing. We anticipate a modest reduction of burden in the future to the DOT and the carriers that file tariffs with DOT. The pre-existing information collection request previously approved by OMB expires on March 31, 2012. We are required to publish this notice in the **Federal Register** by Paperwork Reduction Act of 1955, Public Law 104–13.

DATES: Written comments should be submitted by April 10, 2012.

ADDRESSES: You may submit comments identified by Docket No. DOT–OST–2008–0259 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Kiser, 202–366–2435 or Bernice C. Gray, 202–366–2418, Office of the Secretary, Pricing and Multilateral Affairs Division, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W86–320 and W86–433, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106–0009.

Title: 14 CFR part 221—Exemption from Passenger Tariff-filing Requirements in Certain Instances and Mandatory Electronic Filing of Residual Passenger Tariffs.

Type of Review: Renewal of a Previously Approved Information Collection.

Background: Section 41504 of Title 49 or the United States Code, requires every U.S. and foreign air carrier to file with the Department and keep open for public inspection, tariffs showing all prices for ''foreign air transportation'' between points served by the carrier, as well as all the rules relating to that transportation to the extent required by the Department. This requirement includes passenger fares, related charges and governing rules. The detailed tariff-filing rules and authority for approvals, rejections, and waivers are established by 14 CFR part 221. Once tariffs are allowed to become effective by the Department, these tariffs become legally binding terms in the contract of carriage for international air transportation.

In several rulemaking proceedings, the Department determined that the amount of tariff material filed by carriers exceeded our regulatory requirements in certain respects; that alternative methods existed for protecting consumers and other elements of the public interest that are more effective than filed tariffs; and that procedures should be developed to foster the electronic filing and the review of those tariffs, which should continue to be filed. On November 30, 1995, the Department published a final rule (Exemption from Property Tariff-Filing Requirement for 14 CFR parts 221 and 292, Docket No. 49827) exempting carriers from their regulatory duty to file tariffs for foreign air transportation of cargo.

In the final rule (Notice of Exemption from Exemption from Passenger Tariff-Filing Requirements In Certain Instances, Docket OST–97–2050–12), issued July 21, 1999, the Department determined that the filing of certain tariffs with the Department for foreign air transportation passengers is no longer necessary or appropriate, and accordingly granted another exemption from the tariff-filing requirement set forth in Part 221. The rule also required that all remaining tariffs be filed electronically. A substantial number of provisions in Part 221 were removed, where redundant or out-dated, given present regulatory practices.

On October 7, 1999, the Assistant Secretary issued a notice under 14 CFR part 293, Notice of Exemption from the Department's Tariff-Filing Requirement, Docket OST–97–2050–14, specifying the terms of the exemptions for markets in Category A (no fare filing (s), Category B exemptions for markets in Category A (no fare filing (s)), Category B (normal one-way economy fare filing (s) only) or Category C (filing all fares), taking into account specific factors present in each market. The notice also specified which general rules must continue to be filed.

On September 12, 2005, the Assistant Secretary issued a Notice of Exemption from the Department's Tariff-Filing Requirements, Docket OST–97–2050–15, updating the list of countries added to the tariff-filing exemptions under 14 CFR for country-pair markets transferring more countries between categories, and increasing the number of exempted countries between categories, and increasing the number of exempted countries from the tariff-filing requirements.

On April 8, 2008, the Assistant Secretary issued a third notice (Notice of Exemption from the Department's Tariff-Filing Requirements, Docket OST–97–2050–18), updating the list of countries added to the tariff-filing exemptions under 14 CFR part 293 for country-pair markets, transferring more countries between categories and increasing the number of exempted countries from the tariff-filing requirements. Most of the changes in the 2005 and 2008 notices moved countries into Category A (no fare filing (s), reflection the increasing number of ''open skies'' air services agreements between the United States and its trading partners). The effect on the burden hours cannot be determined at this time for the newest updated list of tariff-filing exemptions. Because of exemptions that have been granted to U.S. and foreign carriers from the statutory and regulatory duty to file international passenger tariffs for many markets, the burden of such filings has been substantially reduced. When the final rule was issued in July 1999, we

estimated that total annual burden on respondents at 650,000 hours. In 2007, the Department received 45,840 electronic filings, with an estimated annual burden of 229,200 burden hours. This reflected the fact that fewer markets were subject to filing requirements, but the reduction was tempered somewhat by a higher frequency of filings in markets still subject to filing. Considering these offsetting factors, we anticipate a modest further reduction of burden in the future.

Respondents: The vast majority of the air carriers filing international tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that offer an-demand air-taxi service are not required to file such tariffs.

Respondents: The vast majority of the air carriers filing international tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that offer an-demand air-taxi service are not required to file such tariffs.

Frequency: The information will be collected annually.

Number of Respondents: 148.

Number of Responses: 46,000.

Total Annual Burden: 230,000 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on February 2, 2012.

John Kiser,

Chief, Pricing & Multilateral Affairs Division, Office of Secretary of Transportation.

[FR Doc. 2012–2818 Filed 2–9–12; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Release of Aeronautical Property at New Castle Airport (ILG), New Castle, DE

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration (FAA) is requesting public comment on the Delaware River and Bay Authority's (DRBA) request to grant the Delaware Department of Transportation a permanent easement on 2.424 +/− acres of airport property along portions of Old Churchman's Road bordering a portion of the Airport property perimeter for roadway improvements. The 2.424 +/− acres land covered by the purposed easement will no longer be dedicated for aviation use by the New Castle Airport.

The DRBA, as operator of the New Castle Airport (ILG), has proposed the extension of Taxiway ''H'' and the development of an approximate thirty-eight (38) acre parcel of airport property on the southeasterly side of Old Churchman's Road for aviation related purposes. The Thirty-Eight Acre Parcel is currently undeveloped and separated from the main airport property by Old Churchman's Road. In order to gain connectivity and access to the Thirty-Eight Acre Parcel and allow for the extension of Taxiway ''H'' and future development, 0.610 +/− acres of Old Churchman's Road must be vacated by the Delaware Department of Transportation and returned to New Castle County as fee owner for aeronautical use. Once the 0.610+/− acres of Old Churchman's Road is vacated, future road improvements to include, but not limited to, the upgrade of Old Churchman's Road from Route 13 to the easterly boundary of the Thirty-Eight Acre Parcel, the construction of a public road connecting Old Churchman's Road and New Churchman's Road at the eastern boundary of the Thirty-Eight Acre Parcel, and the construction of certain improvements along New Churchman's Road can be made on the proposed 2.424 +/− acre easement area. This will allow Delaware Department of Transportation to bring portions of Old Churchman's Road up to standards and accommodate a new connector from Old Churchman's Road to New Churchman's Road.

The 2.424 +/− acre parcel is located at New Castle Airport (ILG), New Castle, DE, situated northwesterly of Dupont Highway, U.S. Route 13 and northeasterly of New Churchman's Road, Delaware State Road 58, New Castle Hundred, New Castle County, Delaware. The parcel is comprised of several small, narrow, Right-of-Way easement ''strips'' totaling 2.424 +/− acres in aggregate and is generally located along Old Churchman's Road commencing at Route 13 and running in a westerly direction to the easterly property line of the Thirty-Eight Acre Parcel. The property is currently depicted on the Airport Layout Plan (ALP) of record as airport property and consists of five sections of narrow strips of land varying 1.272 acres to 0.054 acres. The strips of land are parts of Tax Parcel No. 10–018.00–006. These areas, totaling 2.424 +/−, acres are not required for aeronautical use and can be used for road improvements.

DATES: Comments must be received on or before March 12, 2012.

ADDRESSES: Documents are available for review, by appointment, at the Airport Manager's office: Stephen Williams, Airport Executive Director, Delaware River and Bay Authority, New Castle Airport, 151 Dupont Highway, New Castle, DE 19720–5124, 302–325–5124; and at the FAA Harrisburg Airports District Office: James M. Fels, Program Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011, (717) 730–2830.

FOR FURTHER INFORMATION CONTACT: James M. Fels, Program Manager, Harrisburg Airports District Office (location listed above).

SUPPLEMENTARY INFORMATION: The Levy Court of New Castle County acquired the property that constitutes the Airport through a conveyance from the United States of America, acting through and by the War Assets Administration on October 27, 1947. This conveyance transferred to New Castle County land to be used for aviation related purposes. Over the years, portions of the original land have been released by New Castle County and Federal Aviation Administration actions. In 1995, under agreement with New Castle County, the Delaware River and Bay Authority assumed sponsorship and operational control of the airport. There are no known adverse impacts to the operation of the airport and the 2.424 +/− acre area of land is not needed for any foreseeable future aeronautical development as shown on the approved New Castle ALP. Ownership will be retained by New Castle County.

Section 22.16 of FAA Order 5190.6B, FAA Airport Compliance Manual, requires fair market value be received

for all deletions from the airport's federally obligated real property. Intangible benefits received by the airport may be used as an offset against any such fair market value in determining the monetary consideration, if any, to be exchanged. The fee simple property value of the 2.424 +/− acre area is estimated at $55,000.00+/− per acre, or $133,320.00. The value of an easement would be substantially less. The ability to expand Taxiway ''H'' and to develop the Thirty-Eight Acre Parcel for aviation purposes has the potential to generate an estimated $885,000.00 per year in lease revenue based on a 71.3 percent lease ratio of the property per the current Airport Layout Plan. Since the intangible benefits to the airport would far exceed the fee simple fair market value of the property, no monetary payment for the easement would be required.

Interested persons are invited to comment on the proposed change in use of the property. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania on February 1, 2012.

Lori K. Pagnanelli,

Manager, Harrisburg Airports District Office.

[FR Doc. 2012–3148 Filed 2–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0327]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt fifteen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective February 10, 2012. The exemptions expire on February 10, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On December 19, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from fifteen individuals and requested comments from the public (76 FR 78722). The public comment period closed on January 18, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the fifteen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These fifteen applicants have had ITDM over a range of 1 to 53 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 19, 2011, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the fifteen exemption applications, FMCSA exempts, Mathew B. Bartlett (IA), Colby S. Blank (NE), Gene J. Bottger (WA), Ralph F. Caianiello, Jr. (NC), Ronald A. Elison (NJ), Vernon L. Esham (MD), Steven R. Fortunat (NJ), Kenneth J. Hill (KY), Cecil T. Keith (GA), Mervin R. Koehn (MS), Leonard E. Lucas, Jr. (CA), Frank E. Ray (KS), Stanley L. Rybarczyk (IL), Harold J. Smith (WI) and Gene A. Willis (WV) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: January 31, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–3062 Filed 2–9–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2007–29019]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 14 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 5, 2012. Comments must be received on or before March 12, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2007–29019, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 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.
- *Fax:* 1–202 493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Divison, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 14 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 14 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Lee A. Burke (WI)
Barton C. Caldara (WI)
Allan Darley (UT)
Robin S. England (GA)
Richard Hailey, Jr. (DC)
Roger V. Hodges (IL)
Donald W. Holt (MA)
George R. Knavel (UT)
John R. Knott, III (MD)
Timothy S. Miller (AZ)
Edward D. Pickle (GA)
Ezequiel M. Ramirez (TX)
Robert L. Thies (IN)
James T. Wortham, Jr. (GA)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 14 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (68 FR 61857; 68 FR 74699; 68 FR 75715; 69 FR 10503; 69 FR 12536; 70 FR 57353; 70 FR 72689; 71 FR 644; 71 FR 6829; 72 FR 39879; 72 FR 52419; 72 FR 58362; 72 FR 62897; 72 FR 67344; 73 FR 8392; 74 FR 64124; 74 FR 65845; 75 FR 8184). Each of these 14 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 12, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 14 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: January 31, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–3080 Filed 2–9–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–2009–0291]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 5 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 7, 2012. Comments must be received on or before March 12, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–2009–0291, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* 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.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf*.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 5 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 5 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Harry R. Littlejohn (LA)
Dennis J. Lessard (IN)
Robert J. Townsley (VA)
Jeffrey G. Wuensch (WI)
Jeffery T. Zuniga (CT)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 5 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404; 64 FR 54948; 64 FR 66962; 65 FR 159; 67 FR 10475; 69 FR 8260; 71 FR 6824; 73 FR 7360; 74 FR 65842; 75 FR 8183; 75 FR 9478). Each of these 5 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 12, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 5 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is

being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: January 31, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–3081 Filed 2–9–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Information Collection Activities

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek from the Office of Management and Budget (OMB) approval of the information collections required under 49 U.S.C. 10904–05 and 10907, and 16 U.S.C. 1247(d). Under these statutory provisions, the Board administers programs designed to preserve railroad service or rail rights-of-way. When a line is proposed for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board: an offer of financial assistance (OFA) to subsidize or purchase a rail line for which a railroad is seeking abandonment (49 U.S.C. 10904), including a request for the Board to set terms and conditions of the financial assistance; a request for a public use condition (§ 10905); or a trail-use request (16 U.S.C. 1247(d)). Similarly, when a line is placed on a system diagram map identifying it as an anticipated or potential candidate for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board a feeder line application to purchase the identified rail line (§ 10907). Additionally, the railroad owning the rail line subject to abandonment must, in some circumstances, provide information to the applicant or offeror. The relevant information collections are described in more detail below.

Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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 when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's Request For OMB Approval.

Description of Collections

Title: Statutory Authority to Preserve Rail Service.

OMB Control Number: 2140–00XX.

STB Form Number: None.

Type of Review: Existing collections in use without an OMB control number.

Respondents: Affected shippers, communities, or other interested persons seeking to preserve rail service over rail lines that are proposed or identified for abandonment, and railroads that are required to provide information to the offeror or applicant.

Number of Respondents: 60 (including informational filings required of railroads).

Frequency: On occasion.

TABLE—NUMBER OF YEARLY RESPONSES

Type of filing	Number of filings
Offer of Financial Assistance	3
OFA—Railroad Reply to Request for Information	3
OFA—Request to Set Terms and Conditions	1
Request for Public Use Condition	9
Feeder Line Application	1
Trail-Use Request	39

Total Burden Hours (annually including all respondents): 374 hours (sum total of estimated hours per response X number of responses for each type of filing).

TABLE—ESTIMATED HOURS PER RESPONSE

Type of filing	Number of hours per response
Offer of Financial Assistance	32
OFA—Railroad Reply to Request for Information	10
OFA—Request to Set Terms and Conditions	4
Request for Public Use Condition	2
Feeder Line Application	70
Trail-Use Request	4

Total "Non-hour Burden" Cost (such as filing fees): $41,980 (sum of estimated "non-hour burden" cost per response X number of responses for each statutory section and type of filing).

TABLE—ESTIMATED "NON-HOUR BURDEN" COST PER RESPONSE

Type of filing	Filing costs	Other costs	Total costs
Offer of Financial Assistance	$1,500	$90	$1,590
OFA—Railroad Reply to Request for Information	0	30	30
OFA—Request to Set Terms and Conditions	23,100	30	23,130
Public Use Request	0	30	30
Feeder Line Application	2,600	200	2,800
Trail-Use Request	250	30	280

Needs and Uses: Under the Interstate Commerce Act, Public Law 104–88, 109 Stat. 803 (1995), and Section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), persons seeking to preserve rail service may file pleadings before the Board to acquire or subsidize a rail line for continued service, or to impose a trail use or public use condition. Under 49 U.S.C. 10904, the filing of an OFA starts a process of negotiations to define the financial assistance needed to purchase or subsidize the rail line sought for abandonment. Once the OFA is filed, the offeror may request additional information from the railroad, which the railroad must provide. If the parties

cannot agree to the sale or subsidy, the Board may be asked to set the terms and conditions of the financial assistance. Under § 10905, a public use request allows the Board to impose a 180-day public use condition on the abandonment of a rail line, allowing the parties to negotiate a public use for the rail line. Under § 10907, a feeder line application provides the basis for authorizing an involuntary sale of a rail line. Finally, under 16 U.S.C. 1247(d), a trail-use request, if agreed upon by the abandoning carrier, requires the Board to condition the abandonment by issuing a Notice of Interim Trail Use (NITU) or Certificate of Interim Trail Use (CITU), allowing the parties to negotiate an interim trail use/rail banking agreement for the rail line.

The collection by the Board of these offers, requests, and applications, and the railroad's replies (when required), enables the Board to meet its statutory duty to regulate the referenced rail transactions. See *Table—Statutory and Regulatory Provisions* below.

Retention Period: Information in these collections is maintained by the Board for 10 years, after which it is transferred to the National Archives as permanent records.

DATES: Comments on this information collection should be submitted by April 10, 2012.

ADDRESSES: Direct all comments to Marilyn Levitt, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, or to *levittm@stb.dot.gov.* When submitting comments, please refer to ''Statutory Authority to Preserve Rail Service.''

FOR FURTHER INFORMATION CONTACT: Marilyn Levitt at (202) 245–0269 or at *levittm@stb.dot.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Relevant STB regulations are referenced below and may be viewed on the STB's Web site under E–Library > Reference: STB Rules, *http://www.stb.dot.gov/stb/elibrary/ref_stbrules.html.*

SUPPLEMENTARY INFORMATION: Respondents seeking authority from the Board to preserve rail lines must submit certain information required under the Board's related regulations and, in some circumstances, railroads seeking to abandon a line must disclose certain information to the offeror or applicant.

Offer of Financial Assistance. When a rail line would otherwise be approved for abandonment (or discontinuance), any financially responsible person may seek to acquire the line for continued rail service (after abandonment has been approved), or may seek to temporarily subsidize continued operations by the incumbent railroad (after abandonment or discontinuance has been approved), by filing an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27. An OFA may be submitted to the Board as soon as the railroad seeks abandonment (or discontinuance) authority. Once an OFA is submitted, the abandoning railroad must, upon request, promptly provide to any party considering an OFA and to the Board an estimate of the annual subsidy or minimum purchase price; a report on the physical condition of line; and data on traffic, revenues, net liquidation value, and the cost to rehabilitate to class I (minimum) track standards. If the parties are not able to agree upon the purchase price or subsidy, then, to move forward, either party may ask the Board to set the price or subsidy, which will be binding upon the parties if the offeror chooses to accept the terms set by the Board and proceed with the purchase.

Public Use Request. Any person may request that the Board prohibit an abandoning railroad from disposing of the right-of-way—for up to 180 days—without first offering the right-of-way (on reasonable terms) for other suitable public purposes (such as mass transit, pipeline, transmission lines, recreation, etc.). Such requests are governed by 49 U.S.C. 10905 and 49 CFR 1152.28.

Feeder Line Application. When a line has been identified on a railroad's system diagram map as a potential candidate for abandonment (or discontinuance), but before abandonment (or discontinuance) authority has been sought, any financially responsible person (other than a Class I or II railroad) may, by filing a feeder line application under 49 U.S.C. 10907 and 49 CFR part 1151, seek to acquire the line for continued rail service under the forced sale provisions of the feeder railroad development program.

Trail-Use Request. The Trails Act provides a mechanism whereby any interested person may seek to ''railbank'' a rail right-of-way that has been approved for abandonment and use the property in the interim as a recreational trail. The Board has a ministerial role in this process; under 49 CFR 1152.29, interested persons may submit a request to the Board for a trail-use condition, and if the statutory conditions are met, the Board must authorize the parties to negotiate a trail-use agreement by issuing a CITU, or, in an exemption proceeding, a NITU. The CITU or NITU typically permit negotiations for 180 days, but the negotiations can be extended upon request to the Board. Under the Trails Act, trail-use agreements are consensual, not forced. The abandoning railroad is free to choose whether or not to enter into or continue negotiations to transfer (all or part of) the right-of-way to a trail sponsor.

Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(c)(2)(A) of the PRA, Federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: February 7, 2012.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–3178 Filed 2–9–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Proposed railroad cost recovery procedures productivity adjustment.

SUMMARY: In a decision served on February 6, 2012, we proposed to adopt 1.008 (0.8% per year) as the measure of average change in railroad productivity for the 2006–2010 (5-year) averaging period. This represents a 0.6% decrease over the average for the 2005–2009 period. The Board's February 6, 2012 decision in this proceeding stated that comments may be filed addressing any perceived data and computational errors in our calculation. It also stated that, if there were no further action taken by the Board, the proposed productivity adjustment would become effective on March 1, 2012.

DATES: The productivity adjustment is effective March 1, 2012. Comments are due by February 21, 2012.

ADDRESSES: Send comments (an original and 10 copies) referring to Docket No. EP 290 (Sub-No. 4) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Michael Smith, (202) 245–0322. Federal Information Relay Service (FIRS) for the hearing impaired, (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site at *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: February 6, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012–3072 Filed 2–9–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 7, 2012.

The Department of the Treasury will submit 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, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before March 12, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave., NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0499.

Type of Review: Extension without change of a currently approved collection.

Title: Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

Form: 5305–SEP.

Abstract: This form is used by an employer to make and agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with the IRS but to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions to the SEP. The data is used to verify the deduction.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 495,000.

OMB Number: 1545–1221.

Type of Review: Revision of a currently approved collection.

Title: EE–147–87 (Final) Qualified Separate Lines of Business.

Abstract: The affected public includes employers who maintain qualified employee retirement plans. Where applicable, the employer must furnish notice to the IRS that the employer treats itself as operating qualified separate lines of business and some may request an IRS determination that such lines satisfy administrative scrutiny.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 444.

OMB Number: 1545–1660.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 99–43, Nonrecognition Exchanges under Section 897.

Abstract: This notice announces a modification of the current rules under Temporary Regulation Sec. 1.897–6T(a)(1) regarding transfers, exchanges, and other dispositions of U.S. real property interests in nonrecognition transactions occurring after June 18, 1980. The new rule will be included in regulations finalizing the temporary regulations.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 200.

OMB Number: 1545–1788.

Type of Review: Extension without change of a currently approved collection.

Title: Taxpayer Advocacy Panel (TAP) Membership Application Process.

Form: 13013, 13013–D.

Abstract: The Federal advisory Committee Act requires that committee membership be fairly balanced in terms of points of view represented and the functions to be performed. As a result, members of specific committees often have both the expertise and professional skills that parallel the program responsibilities of their sponsoring agencies. Selection of committee members is made based on the FACA's requirements and the potential member's background and qualifications. Therefore, an application, Form 13013, is needed to ascertain the desired skills set for membership. The TAP Tax Check Waiver, Form 13013–D, must be signed as a condition of membership. New and continuing members of IRS Advisory Committees/Councils are required to undergo a tax compliance check. Once signed by the applicant, the tax check wavier authorizes the Government Liaison Disclosure analysts to provide the results to the appropriate IRS officials.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 525.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–3196 Filed 2–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission to OMB; Comment Request

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a new information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning the information collection titled ''Capital Distribution.'' It is also giving notice that it has submitted the collection to OMB for review.

DATES: Comments must be received by March 12, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room,

Mailstop 2–3, Attention: 1557–NEW, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC, 250 E Street SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–4700.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–NEW, by mail to U.S. Office of Management and Budget, 725, 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Ira L. Mills, (202) 874–6055, or Mary H. Gottlieb, (202) 874–4824, OCC Clearance Officers, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting OMB approval of the following information collection, which was previously approved under the Office of Thrift Supervision's OMB Control No. 1550–0059. Title III of The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (Dodd-Frank Act) transferred the powers, authorities, rights and duties of the Office of Thrift Supervision (OTS) to other banking agencies, including the OCC. In addition, Dodd-Frank requires the Board of Governors of the Federal Reserve System (Board) to promulgate regulations governing capital distributions. OTS Control No. 1550–0059 was, therefore, transferred to the FRB under OMB Control No. 7100–0339. This information collection replaces the collection transferred to the FRB.

The OCC solicited comments on this collection on August 23, 2011 (76 FR 52735). No comments were received. Comments continue to be solicited on:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of the OCC;

b. The accuracy of OCC's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in our request for OMB approval. All comments will become a matter of public record.

Title of Collection: Capital Distribution.

OMB Control Number: 1557–NEW.

Description: Under 12 CFR 163.143, the OCC will review the information to determine whether the request of Federal savings associations is in accordance with existing statutory and regulatory criteria. The information also provides the OCC with a mechanism for monitoring capital distributions since distributions may reduce an institution's capital levels and may, in some instances, impact the institution adversely.

Type of Review: New collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 495.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 546 hours.

Dated: February 2, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–3076 Filed 2–9–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Excise Tax Under Section 4980B, 4980D, 4980E & 4980G.

DATES: Written comments should be received on or before April 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Elaine Christophe, (202) 622–3179, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Under Section 4980B, 4980D, 4980E & 4980G.

OMB Number: 1545–2146.

Regulation Project Number: REG–120476–07.

Abstract: This regulation provide the requirement for filing of the return and the time for filing a return for the payment of the excise taxes under section 4980B, 4980D, 4980E, and 4980G.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit organizations, and individuals.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: .50 hours.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 10, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–3132 Filed 2–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans.

DATES: Written comments should be received on or before April 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Elaine.H.Christophe@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans.

OMB Number: 1545–0817.

Regulation Project Number: EE–28–78 (TD 7845).

Abstract: Internal Revenue Code section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for public inspection. Some information may be withheld from disclosure. The Internal Revenue Service needs the required information to comply with requests for public inspection.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal government.

Estimated Number of Respondents: 42,370.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 8,538.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 14, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–3133 Filed 2–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Section 103–Remedial Payment Closing Agreement Program.

DATES: Written comments should be received on or before April 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Elaine.H.Christophe@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Section 103—Remedial Payment Closing Agreement Program.

OMB Number: 1545–1528. *Revenue Procedure Number:* Revenue Procedure 97–15.

Abstract: This information is required by the Internal Revenue Service to verify compliance with sections 57, 103, 144, 142, 144, 145, and 147 of the Internal Revenue Code of 1986, as applicable (including any corresponding provision, if any, of the Internal Revenue Code of 1954). This information will be used by the Service to enter into a closing agreement with the issuer of certain state or local bonds to establish the closing agreement amount.

Current Actions: There are no changes being made to the information collection at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal government, and not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 14, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–3134 Filed 2–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4810, Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

DATES: Written comments should be received on or before April 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

OMB Number: 1545–0430.

Form Number: 4810.

Abstract: Fiduciaries representing a dissolving corporation or a decedent's estate may request a prompt assessment of tax under Internal Revenue Code section 6501(d). Form 4810 is used to help locate the return and expedite the processing of the taxpayer's request.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, farms, and the Federal government.

Estimated Number of Respondents: 4,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 24,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 10, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–3135 Filed 2–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Qualified Electing Fund Elections.

DATES: Written comments should be received on or before April 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of this regulation should be directed to Elaine Christophe, (202) 622–3179, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Electing Fund Elections.

OMB Number: 1545–1514.

Regulation Project Number: REG–209040–88.

Abstract: This regulation permits certain shareholders to make a special election under Internal Revenue Code section 1295 with respect to certain preferred shares of a passive foreign investment company. This special election operates in lieu of the regular section 1295 election and requires less annual reporting. Electing preferred shareholders must account for dividend income under the special rules of the regulation, rather than under the general income inclusion rules of section 1293.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit organizations, and individuals.

Estimated Number of Respondents: 1,030.

Estimated Time per Respondent: .58 hours.

Estimated Total Annual Burden Hours: 600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 10, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–3139 Filed 2–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0678]

Agency Information Collection (Agreement To Train on the Job Disabled Veterans): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 12, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0678'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 273–0487 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0678.''

SUPPLEMENTARY INFORMATION:

Title: Agreement to Train on the Job Disabled Veterans, VA Form 28–1904.

OMB Control Number: 2900–0678.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1904 is a written agreement between an on the job training (OJT) establishments and VA. The agreement is necessary to ensure that OJT is providing claimants with the appropriate training and supervision, and VA's obligation to provide claimants with the necessary tools, supplies, and equipment for such training.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 28, 2011, at pages 73019-73020.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 150 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 600.

Dated: February 6, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–3066 Filed 2–9–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0677]

Agency Information Collection (Contract for Training and Employment): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 12, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0677'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0677.''

SUPPLEMENTARY INFORMATION:

Title: Contract for Training and Employment (Chapter 31, Title 38 U.S. Code), VA Form 28–1903.

OMB Control Number: 2900–0677.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1903 is used to standardize contracts agreements between VA and training facilities/vendors providing vocational rehabilitation training and employment to veterans. VA uses the data collected to ensure that veterans are receiving training and employment as agreed in the contract.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 28, 2011, at page 73020.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,200.

Dated: February 6, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–3067 Filed 2–9–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0728]

Proposed Information Collection (Operation Enduring Freedom/Operation Iraqi Freedom Veterans Health Needs Assessment) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 12, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0728'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7485, Fax (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0728.''

SUPPLEMENTARY INFORMATION:

Title: Operation Enduring Freedom/Operation Iraqi Freedom Veterans Health Needs Assessment, VA Form 10–21091.

OMB Control Number: 2900–0728.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–21091 is used to gather input from returning war zone veterans to identify their needs, concerns and health care preferences. The data collected will help VA to improve the quality and relevance of care offered as well as access to care through the removal of identified barriers to care and to develop care pathways as indicated by veterans' responses to the survey.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 22, 2011, at page 72243.

Affected Public: Individuals and Households.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

Dated: February 6, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–3068 Filed 2–9–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0727]

Agency Information Collection (Survey of Post-Deployment Adjustment Among OEF and OIF Veterans) Activity Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 12, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0727'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, fax (202) 273–0487 or email

denise.mclamb@mail.va.gov. Please refer to ''OMB Control No. 2900–0727.''

SUPPLEMENTARY INFORMATION:

Title: Survey of Post-Deployment Adjustment Among OEF and OIF Veterans, VA Form 10–21089.

OMB Control Number: 2900–0727.

Type of Review: Extension of a currently approved collection.

Abstracts: The data collected on VA Form 10–21089 will be used to access health conditions, occupational, family and social adjustment and functioning of Veterans who were deployed to Afghanistan and/or Iraq. The goal is to identify the gender-specific treatment needs of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) Veterans with an emphasis on the needs of female Veterans who experienced war zone stressor beyond traditional combat and sexual trauma during deployment. VA will use the data to identify how homecoming experiences (healthcare, relationship and parenting readjustment) differently affect male and female Veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 22, 2011, at pages 72242–72243.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,333 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,000.

Dated: February 6, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–3069 Filed 2–9–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0751]

Agency Information Collection (Supplier Perception Survey) Activity Under OMB Review

AGENCY: Office of Acquisition, Logistics and Construction, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Acquisition, Logistics and Construction, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 12, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–2900–0751'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, fax (202) 273–0487 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–2900–0751.''

SUPPLEMENTARY INFORMATION:

Title: Department of Veterans Affairs Supplier Perception Survey.

OMB Control Number: 2900–2900–0751.

Type of Review: Extension of previously approved collection.

Abstract: The data collected will be used to improve the quality of services delivered to VA customers and to help develop key performance indicators in acquisition and logistics operations across VA enterprise.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 15, 2011 on pages 70827–70828.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden: 35,100 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 45,840.

Dated: February 6, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–3070 Filed 2–9–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet on March 20–22, 2012, in room 230 at VA Central Office, 810 Vermont Avenue NW., Washington, DC, from 8:30 a.m. until 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

The agenda will include overviews of the Veterans Health Administration, the Veterans Benefits Administration, the National Cemetery Administration, and the Women Veterans Health Strategic Health Care Group; and briefings on mental health, women Veterans' legislative issues, military sexual trauma, the claims process, and homeless initiatives for women Veterans.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Ms. Shannon L. Middleton, Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue NW., Washington, DC 20420, or email at *00W@mail.va.gov,* or fax to (202) 273–7092. Individuals who wish to attend the meeting or want additional information should contact Ms. Middleton at (202) 461–6193.

Dated: February 7, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–3170 Filed 2–9–12; 8:45 am]

BILLING CODE P

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Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–06]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD reviewed in 2011 for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

In accordance with 24 CFR part 581.3(b) landholding agencies were required to notify HUD by December 31, 2011, the current availability status and classification of each property controlled by the Agencies that were published by HUD as suitable and available which remain available for application for use by the homeless.

Pursuant to 24 CFR part 581.8(d) and (e) HUD is required to publish a list of those properties reported by the Agencies and a list of suitable/unavailable properties including the reasons why they are not available.

Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; ARMY: Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy., Arlington, VA 22202: (571) 256–8145; COE: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; GSA: Mr. John E.B. Smith, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405; (202) 501–0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave. NW., 4th Floor, Washington, DC 20006: (202) 254–5522; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426; VETERANS AFFAIRS: Mr. George L. Szwarcman, Acting Director, Real Property, Department of Veterans Affairs, 811 Vermont Avenue NW., Room 555, Washington, DC 20420; (202) 461–8234; (These are not toll-free numbers).

Dated: February 2, 2012.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V PROPERTIES REPORTED IN YEAR 2011 WHICH ARE SUITABLE AND AVAILABLE

Agriculture

Colorado

Building

Residence #2
Property Number: 15201130001
Weld Country Rd.
Nunn CO 80648
Status: Excess
Comments: 1,890 sq. ft.; recent use: residential

Air Force

California

Building

Facility 1
Property Number: 18200830012
OTHB Radar Site
Tulelake CA 91634
Status: Unutilized
Comments: 7920 sq. ft., most recent use—communications

Facility 2
Property Number: 18200830014
OTHB Radar Site
Tulelake CA 91634
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Facilities 3, 4
Property Number: 18200830015
OTHB Radar Site
Tulelake CA 91634
Status: Unutilized
Comments: 4160 sq. ft. each, most recent use—communications

Facility 1
Property Number: 18200830016
OTHB Radar Site
Christmas Valley CA 97641
Status: Unutilized
Comments: 16566 sq. ft., most recent use—communications

Facility 2
Property Number: 18200830017
OTHB Radar Site
Christmas Valley CA 97641
Status: Unutilized
Comments: 900 sq. ft., most recent use—veh maint shop

Air Force

California

Building

Facility 4
Property Number: 18200830018
OTHB Radar Site
Christmas Valley CA 97641
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—communications

Facility 6
Property Number: 18200830019
OTHB Radar Site
Christmas Valley CA 97641
Status: Unutilized
Comments: 14,190 sq. ft., most recent use—transmitter bldg.

Bldg. 5435
Property Number: 18201140041
Davis Ave.
Barksdale CA 71101
Status: Underutilized
Comments: off-site removal only; 3,024 sq. ft.; current use: bank; need repairs

Land

Parcels L1 & L2 Property Number: 18200820034

George AFB
Victorville CA 92394
Status: Excess
Comments: 157 acres/desert, pump-and-treat system, groundwater restrictions, AF access rights, access restrictions, environmental concerns

Air Force

Colorado

Building

Bldg. 1425 and 143
Property Number: 18201140024
Peterson AFB
Colorado Springs CO 80914
Status: Unutilized
Comments: off-site removal only; 1425–64,254 sq. ft.; 143–100 sq. ft.; current use: storage to base exchange; need repairs; possible asbestos

AF Academy
Property Number: 18201140026
8010 Sage Brush Dr.
USAF Academy CO 80840
Status: Unutilized
Comments: 2,670 sq. ft.; current use: unknown; 2007 Nat'l Register of Historic Places; fair conditions; possible asbestos

Hawaii

Building

Bldg. 849
Property Number: 18200330008
Bellows AFS
Bellows AFS HI
Status: Unutilized
Comments: 462 sq. ft., concrete storage facility, off-site use only

Air Force

Maine

Building

Bldgs 1, 2, 3, 4
Property Number: 18200840009
OTH–B Radar Site
Columbia Falls ME
Status: Unutilized
Comments: various sq. ft., most recent use—storage/office

Massachusetts

Land

Land/TRACT #A101
Property Number: 18201130003
McDill Rd.
Bedford MA 07131
Status: Unutilized
Comments: 5.35 acres, recent use: AF trailer court, property limitation: local Bedford Zoning By-Laws (Industrial Park District A–IP)

Missouri

Land

Communications Site
Property Number: 18200710001
County Road 424
Dexter Co: Stoddard MO
Status: Unutilized
Comments: 10.63 acres

Nebraska

Building

10 Bldgs.
Property Number: 18201120014
Temp. Lodging
Offutt NE 68113
Location: 5089, 5090, 5091, 5092, 5093, 5094, 5095, 5097, 5098, 5099
Status: Excess
Comments: off-site removal only, sq. ft. varies btw. each bldg., current-use: temp. lodging, good to fair conditions for all bldgs.

Bldg. 5087
Property Number: 18201140027
Capehart Housing Area
Offut NE 68113
Status: Excess
Comments: 25LF-wide, 14LF-height, 30LF-length; current use: exchange store; good to fair condition

Air Force

New York

Building

Bldg. 240
Property Number: 18200340023
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Property Number: 18200340024
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 248
Property Number: 18200340025
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Air Force

North Carolina

Land

0.14 acres
Property Number: 18200810001
Pope AFB
Pope AFB NC
Status: Excess
Comments: most recent use—middle marker, easement for entry

South Carolina

Building

256 Housing Units
Property Number: 18200920001
Charleston AFB
South Side Housing
Charleston SC
Status: Excess
Comments: various sq. ft., presence of asbestos/lead paint, off-site use only

Texas

Building

Band Center
Property Number: 18201140038
Lackland
San Antonio TX
Status: Unutilized
Comments: off-site removal only; 15,669 sq. ft.; current use: band center; need repairs

Air Force

Texas

Land

0.13 acres
Property Number: 18200810002
DYAB, Dyess AFB
Tye Co: Taylor TX 79563
Status: Unutilized
Comments: most recent use—middle marker, access limitation

Army

Alabama

Building

Bldgs. 4704 & 4707
Property Number: 21201110019
Andrews Ave Motorpool
Fort Rucker AL 36362
Status: Unutilized
Comments: Off-site removal only, bldg 4704—2600 sq. ft. and bldg. 4707—120 sq. ft., current use: vehicle maint. shop for bldg. 4704 and dispatch—bldg 4707, fair conditions; need repairs

Bldg. 8404
Property Number: 21201140050
Redstone Arsenal
Redstone Arsenal AL 35898
Status: Unutilized
Comments: off-site removal only; 430 sq. ft.; current use: explosive testing; needs extensive repairs; possible asbestos and lead base paint

10 Bldgs.
Property Number: 21201140053
Redstone Arsenal
Redstone Arsenal AL 35898
Location: 1402, 1402A, 1403, 1403A, 1404, 1404A, 1405, 1405A, 1406, 1406A
Status: Unutilized
Comments: off-site removal only; possible asbestos and lead base paint; sq. ft. varies; extensive repairs needed; current use: military housing

Army

Alaska

Building

Bldg. 00001
Property Number: 21200340075
Kiana Natl Guard Armory
Kiana AK 99749
Status: Excess
Comments: 1200 sq. ft., butler bldg., needs repair, off-site use only

Bldg. 00001
Property Number: 21200710051
Holy Cross Armory
High Cross AK 99602
Status: Excess
Comments: 1200 sq. ft. armory, off-site use only

Arizona

Building

Bldg. S–306
Property Number: 21199420346
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Status: Unutilized

Comments: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground
Property Number: 21199520073
Yuma Co: Yuma AZ 85365–9104
Status: Underutilized
Comments: 3789 sq. ft., 2-story, major structural changes required to meet floor loading code requirements, presence of asbestos, off-site use only

Army

Arizona

Building

Bldg. 43002
Property Number: 21200440066
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Comments: 23,152 sq. ft., presence of asbestos/lead paint, most recent use—dining, off-site use only

Bldg. 90551
Property Number: 21200920001
Fort Huachuca
Cochise AZ 85613
Status: Excess
Comments: 1270 sq. ft., most recent use—office, off-site use only

Arkansas

Building

7 Bldgs.
Property Number: 21201140055
Pine Bluff Arsenal
Pine Bluff AR 71602
Location:
57240, 57210, 57160, 57150, 57120, 5743, 5739
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: lab/test bldg.

Bldg. 57260
Property Number: 21201140057
Pine Bluff Arsenal
Pine Bluff AR 71602
Status: Unutilized
Comments: off-site removal only; 9,474 sq. ft.; current use: CHM EQ/MAT Bldg.

Army

California

Building

Bldgs. 18026, 18028
Property Number: 21200130081
Camp Roberts
Monterey CA 93451–5000
Status: Excess
Comments: 2024 sq. ft., concrete, poor condition, off-site use only

Colorado

Building

Bldg. 00127
Property Number: 21200420179
Pueblo Chemical Depot
Pueblo CO 81006
Status: Unutilized
Comments: 8067 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Georgia

Building

Bldg. 322
Property Number: 21199720156
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2593
Property Number: 21199720167
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Army

Georgia

Building

Bldg. 2595
Property Number: 21199720168
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldg. 4232
Property Number: 21199830291
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldgs. 5974–5978
Property Number: 21199930135
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993
Property Number: 21199930136
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 4476
Property Number: 21200420034
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Comments: 3148 sq. ft., most recent use—veh. maint. shop, off-site use only

Army

Georgia

Building

Bldg. 9029
Property Number: 21200420050
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Comments: 7356 sq. ft., most recent use—heat plant bldg., off-site use only

Bldg. 00100
Property Number: 21200740052
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 10893 sq. ft., most recent use—battalion hdqts. off-site use only

Bldg. 00129
Property Number: 21200740053
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 4815 sq. ft., presence of asbestos, most recent use—religious education facility, off-site use only

Bldg. 00145
Property Number: 21200740054
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 11590 sq. ft., presence of asbestos, most recent use—post chapel, off-site use only

Bldg. 00811
Property Number: 21200740055
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 42853 sq. ft., most recent use—co hq bldg, off-site use only

Army

Georgia

Building

Bldg. 00812
Property Number: 21200740056
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 1080 sq. ft., most recent use—power plant, off-site use only

Bldg. 00850
Property Number: 21200740057
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 108,287 sq. ft., presence of asbestos, most recent use—aircraft hangar, off-site use only

Bldg. 00860
Property Number: 21200740058
Hunter Army Airfield
Chatham GA 31409
Status: Excess
Comments: 10679 sq. ft., presence of asbestos, most recent use—maint. hangar, off-site use only

Bldg. 00971
Property Number: 21200740062
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 4000 sq. ft., most recent use—vehicle maint., off-site use only

Bldg. 01209
Property Number: 21200740064
Fort Stewart
Hinesville GA 31314
Status: Excess
Comments: 4786 sq. ft., presence of asbestos, most recent use—vehicle maint., off-site use only

Army

Georgia

Building

Bldg. 245
Property Number: 21200740178
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 1102 sq. ft., most recent use—fld ops, off-site use only

Bldg. 2748
Property Number: 21200740180
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 3990 sq. ft., most recent use—office, off-site use only

Bldg. 3866
Property Number: 21200740182
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 944 sq. ft., most recent use—office, off-site use only

Bldg. 8682
Property Number: 21200740183
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 780 sq. ft., most recent use—admin., off-site use only

Bldg. 10800
Property Number: 21200740184
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 16,628 sq. ft., off-site use only

Army

Georgia

Building

Bldgs. 11302, 11303, 11304
Property Number: 21200740185
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: various sq. ft., most recent use—ACS center, off-site use only

Bldg. 0297
Property Number: 21200810045
Ft. Benning
Chattahoochie GA 31905
Status: Excess
Comments: 4839 sq. ft., most recent use—riding stable, off-site use only

Bldg. 3819
Property Number: 21200810046
Ft. Benning
Chattahoochee GA 31905
Status: Excess
Comments: 4241 sq. ft., most recent use—training, off-site use only

Bldg. 10802
Property Number: 21200810047
Ft. Benning
Chattahoochee GA 31905
Status: Excess
Comments: 3182 sq. ft., most recent use—storage, off-site use only

Bldg. 01021
Property Number: 21200840062
Hunter Army Airfield
Savannah GA 31409
Status: Excess
Comments: 6855 sq. ft., most recent use—admin., presence of asbestos, off-site use only

Army

Georgia

Building

6 Bldgs.
Property Number: 21201110038
Fort Benning
Fort Benning Co: Muscogee GA 31905
Location: Bldgs: 02452, 02680, 02864, 02865, 02866, 02867
Status: Underutilized
Comments: Off-site removal only; sq. ft. varies; current use varies; all bldgs. in poor condition—need repairs

7 Bldgs.
Property Number: 21201110051
Ft. Benning
Ft. Benning GA 31905
Location: 02868, 02867, 02870, 02871, 02872, 02873, 02875
Status: Underutilized
Comments: off-site removal only, multiple bldgs. w/varies sq.ft. current use varies from ea. bldg., bldgs. in poor conditions-—needs repairs

4 Bldgs.
Property Number: 21201140011
Hunter Army Airfield
Savannah GA 31409
Location: 1228, 125, 128, 1158
Status: Excess
Comments: off-site removal only; sq. ft. varies; current use: varies; fair to poor conditions— bldgs. need repairs; possible asbestos

5 Bldgs.
Property Number: 21201140012
Hunter Army Airfield
Savannah GA 31409
Location: 1208, 1209, 1211, 1212, 1221
Status: Excess
Comments: Off-site removal only; sq. ft. varies; current use: varies; fair conditions—bldgs. need repairs; possible asbestos

Army

Georgia

Building

Bldg. 1201
Property Number: 21201140013
685 Horace Emmet Wilson Blvd.
Savannah GA 31409
Status: Excess
Comments: off-site removal only; 8,736 sq. ft.; current use: Administrative office; fair conditions—bldg. need repairs; possible asbestos

Bldgs. 1154 and 1157
Property Number: 21201140014
Hunter Army Airfield
Savannah GA 31409
Status: Excess
Comments: off-site removal only; sq. ft. varies; current use: CO HQ Bldg; fair conditions— bldgs. need repair

Bldgs. 140 and 150
Property Number: 21201140015
Hunter Army Airfield
Savannah GA 31409
Status: Excess
Comments: off-site removal only; Bldg 140 = 4,863 sq. ft.; Bldg. 150 = 6,090 sq. ft.; poor conditions—bldgs. need repairs; current use: BDE HQ Bldg.

Hawaii

Building

P–88
Property Number: 21199030324
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818
Location: Approximately 600 feet from Main Gate on Aliamanu Drive
Status: Unutilized
Comments: 45,216 sq. ft. underground tunnel complex, pres. of asbestos, clean-up required of contamination, use of respirator required by those entering property, use limitations

Kansas

Building

10 Bldgs.
Property Number: 21201110009
9081 Vinton School Rd.
Fort Riley Co: Geary KS 66442
Location: 09081, 00179, 09004, 09016, 09074, 09008, 09383, 09384, 09386, 09451
Status: Unutilized
Comments: Off-site removal only; multiple bldgs w/various sq. footage (80–660 sq. ft.), very poor condition, needs major repairs; current use varies

Ft. Riley U.S. Army Reservation
Property Number: 21201110010
9377 6800 N RD
Fort Riley Co: Riley KS 66442
Location: 10 bldgs: 09377, 09302, 09082, 09083, 09084, 09385, 07033, 07034, 07036, 09015
Status: Unutilized
Comments: Off-site removal only; multiple bldgs. w/various sq. footage (610–10,010 sq. ft.), current use varies, office to range operation support, very poor conditions—need major repairs

Army

Kansas

Building

5 Bldgs
Property Number: 21201110016
Fort Riley
Fort Riley Co: Geary KS 66442
Location: Bldgs: 09451, 08369, 07123, 1990, 07816
Status: Unutilized
Comments: Off-site removal only, sq. footage varies w. each bldg; current use varies (gas chamber—storage), some bldgs. need repairs

5 Bldgs
Property Number: 21201110017
Fort Riley
Fort Riley Co: Geary KS 66442
Location: Bldgs: 01781, 07818, 08324, 07739, 8329
Status: Unutilized
Comments: Off-site removal only, sq. ft. varies for each bldg., current use varies (oil storage bldg.—training ctr.), repairs needed for buildings

5 Bldgs.
Property Number: 21201110018
Fort Riley
Fort Riley Co: Geary KS 66442
Location: Bldgs: 01780, 09383, 08322, 08320, 08328
Status: Unutilized
Comments: Off-site removal only, sq. ft. varies, current use varies (training ctr.—dispatch bldg.), poor conditions; need repairs for all

Bldg. 00542

Property Number: 21201120066
542 Huebner Road
Fort Riley USAR
Fort Riley KS
Status: Unutilized
Comments: Off-site removal only, 14,528 sq. ft.; wood; recent use: Army lodging

Army

Kansas

Building

Bldg. 08327
Property Number: 21201120067
8327 Wells St.
Fort Riley USAR
Fort Riley KS
Status: Unutilized
Comments: Off-Site Removal Only, 9,600 sq. ft.; steel; recent use: training aid center

Bldg. 00600
Property Number: 21201120070
600 Caisson Hill Rd.
Ft. Riley USAR
Fort Riley KS
Status: Unutilized
Comments: Off-Site Removal Only, 380,376 sq. ft.; recent use: hospital; off-site removal only

Bldg. 00541
Property Number: 21201120075
541 Huebner Rd.
Fort Riley KS
Status: Unutilized
Comments: Off-Site Removal Only, 18,083 sq. ft.; recent use: Army Lodging; wood; 45 yrs old; off-site removal only

Bldg. 08321
Property Number: 21201120076
8321 Wells St.
Fort Riley KS
Status: Unutilized
Comments: Off-site removal only, 5,060 sq. ft; concrete block; recent use: training aid center

Army

Kansas

Building

Bldg. 00470
Property Number: 21201120077
470 Huebner Rd.
Fort Riley KS
Status: Unutilized
Comments: Off-Site Removal Only, 3,787 sq. ft.; concrete; recent use: lodging

Bldg. 8320
Property Number: 21201120080
8320 Wells St.
Fort Riley KS
Status: Unutilized
Comments: Off-Site Removal Only, 20,240 sq. ft.; concrete bldg.; recent use: training aids center

Bldg. 00540
Property Number: 21201120084
540 Huebner Road
Fort Riley Co: Riley KS
Status: Unutilized
Comments: Off-Site Removal Only, 14,528 sq. ft.; wood structure; recent use: Army lodging; off-site removal only

Bldg. 00471
Property Number: 21201120086
471 Huebner Road
Fort Riley Co: Riley KS
Status: Unutilized
Comments: Off-Site Removal Only, 3,547 sq. ft.; 39 yrs old, concrete; recent use: Army lodging; off-site removal only

Army

Kansas

Building

4 Bldgs.
Property Number: 21201130040
Fort Riley KS 66442
Location: 00471, 00470, 00745, 00615
Status: Unutilized
Comments: off-site removal only; sq ft. vary among properties; recent use: lodging, storage

Bldg. 00600
Property Number: 21201130042
600 Caisson Hill Rd
Fort Riley KS 66442
Status: Unutilized
Comments: off-site removal only; 380,376 sq. ft.; recent use: hospital

Bldgs. 00541 and 08321
Property Number: 21201130044
Ft. Riley
Fort Riley KS
Status: Unutilized
Comments: off-site removal only; sq. ft., vary among properties, recent use: lodging

2 Bldgs.
Property Number: 21201130059
Fort Riley KS 66442
Location: 00540, 00541
Status: Unutilized
Comments: off-site removal only; sq. ft. vary among properties, recent use: lodging

Bldg. 00745
Property Number: 21201130061
Fort Riley KS 66442
Status: Unutilized
Comments: off-site removal only; 99 square feet; recent use: storage

Army

Kansas

Building

Bldg. 00542
Property Number: 21201130063
Fort Riley KS 66442
Status: Unutilized
Comments: off-site removal only; 14,528 sq. ft.; recent use: lodging

2 Bldgs
Property Number: 21201130065
Fort Riley KS 66442
Location: 00470, 08327
Status: Unutilized
Comments: off-site removal only; sq. ft. vary among properties, recent use: lodging, and training center

Kentucky

Building

Fort Knox
Property Number: 21201110011
Eisenhower Avenue
Fort Knox KY 40121
Location: Bldgs: 06559, 06571, 06575, 06583, 06584, 06585, 06586
Status: Unutilized
Comments: Off-site removal only; multiple bldgs. w/various sq. footage (2,578–8,440 sq. ft), current use varies (classroom–dental clinic), lead base paint, asbestos & mold identified

Fort Knox, 10 Bldgs.
Property Number: 21201110012
Bacher Street
2nd Dragoons Rd & Abel St
Fort Knox KY 40121
Location: Bldgs: 06547, 06548, 06549, 06550, 06551, 06552, 06553, 06554, 06557, 06558
Status: Unutilized
Comments: off-site removal only, multiple bldgs. w/various sq. footage (8,527–41,631 sq. ft.), lead base paint, asbestos & mold identified in all bldgs. Current use varies

Army

Kentucky

Building

Fort Knox, 10 Bldgs
Property Number: 21201110015
Eisenhower Ave
Fort Knox KY 40121
Location: Bldgs: 06535, 06536, 06537, 06539, 06540, 06541, 06542, 06544, 06545, 06546
Status: Unutilized
Comments: Off-site removal only, multiple bldgs. w/various sq. ft. (2,510–78,436 sq. ft.), lead base paint, asbestos & mold have been identified in all bldgs. Current use varies

11 Bldgs.
Property Number: 21201140002
Ft. Knox
Ft. Knox KY 40121
Location: 02422, 02423, 02424, 02425, 02956, 02960, 00173, 02197, 02200, 00097, 00098
Status: Unutilized
Comments: off-site removal only; possible lead based paint, asbestos, and mold in all bldgs.; sq. ft. varies; current use: office

5 Bldgs.
Property Number: 21201140003
Ft. Knox
Ft. Knox KY 40121
Location: 02317, 02323, 02324, 02349, 02421
Status: Unutilized
Comments: off-site removal only; possible lead base paint, asbestos, and mold; sq. ft. varies; current use: office

10 Bldgs.
Property Number: 21201140016
Ft. Knox
Ft. Knox KY 40121
Location: 120, 161, 166, 171, 101, 114, 115, 116, 117, 1196
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: office space to storage; possible asbestos and mold

Army

Kentucky

Building

18 Bldgs.
Property Number: 21201140032
Ft. Knox
Ft. Knox KY 40121
Location: 51, 52, 70, 73, 74, 76, 2961, 2963, 2964, 2969, 2970, 2971, 2972, 2973, 2974, 2975, 2979, 2316
Status: Unutilized

Comments: off-site removal only; possible asbestos, mold, and lead base paint; sq. ft. varies; current use: office

12 Bldgs.
Property Number: 21201140033
Ft. Knox
Ft. Knox KY 40121
Location: 77, 78, 80, 81, 85, 86, 92, 94, 96, 9248, 2995, 2996
Status: Unutilized
Comments: off-site removal only; possible mold, asbestos, and lead base paint; sq. ft. varies; current use: office to storage

Bldg. 2980
Property Number: 21201140078
Ft. Knox
Ft. Knox KY 40121
Status: Unutilized
Comments: off-site removal only; 6,900 sq. ft.; current use: office; possible asbestos and mold

Bldg. 1197
Property Number: 21201140079
Ft. Knox
Ft. Knox KY 40121
Status: Unutilized
Comments: off-site removal only; 2,969 sq. ft; current use: office; possible lead base paint, asbestos and mold

Army

Louisiana

Building

Bldg. 8423, Fort Polk
Property Number: 21199640528
Ft. Polk Co: Vernon Parish LA 71459
Status: Underutilized
Comments: 4172 sq. ft., most recent use—barracks

Bldg. T7125
Property Number: 21200540088
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Comments: 1875 sq. ft., off-site use only

Bldgs. T7163, T8043
Property Number: 21200540089
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Comments: 4073/1923 sq. ft., off-site use only

Army

Maryland

Building

Bldg. 0459B
Property Number: 21200120106
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only

Bldg. 00785
Property Number: 21200120107
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 160 sq. ft., poor condition, most recent use—shelter, off-site use only

Bldg. E5239
Property Number: 21200120113
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 230 sq. ft., most recent use—storage, off-site use only

Bldg. E5317
Property Number: 21200120114
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. E5637
Property Number: 21200120115
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 219
Property Number: 21200140078
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Army

Maryland

Building

Bldg. 294
Property Number: 21200140081
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, offsite use only

Bldg. 1007
Property Number: 21200140085
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2214
Property Number: 21200230054
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, offsite use only

Bldg. 00375
Property Number: 21200320107
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only

Army

Maryland

Building

Bldg. 0385A
Property Number: 21200320110
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 944 sq. ft., off-site use only

Bldg. 00523
Property Number: 21200320113
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 3897 sq. ft., most recent use—paint shop, off-site use only

Bldg. 0700B
Property Number: 21200320121
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 505 sq. ft., off-site use only

Bldg. 01113
Property Number: 21200320128
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1012 sq. ft., off-site use only

Bldgs. 01124, 01132
Property Number: 21200320129
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 740/2448 sq. ft., most recent use—lab, off-site use only

Army

Maryland

Building

Bldg. 03558
Property Number: 21200320133
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 18,000 sq. ft., most recent use—storage, off-site use only

Bldg. 05262
Property Number: 21200320136
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 864 sq. ft., most recent use—storage, off-site use only

Bldg. 05608
Property Number: 21200320137
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1100 sq. ft., most recent use—maint bldg., off-site use only

Bldg. E5645
Property Number: 21200320150
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 548 sq. ft., most recent use—storage, off-site use only

Bldg. 00435
Property Number: 21200330111
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1191 sq. ft., needs rehab, most recent use—storage, off-site use only

Army

Maryland

Building

Bldg. 0449A
Property Number: 21200330112
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005

Status: Unutilized
Comments: 143 sq. ft., needs rehab, most recent use—substation switch bldg., off-site use only

Bldg. 0460
Property Number: 21200330114
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1800 sq. ft., needs rehab, most recent use—electrical EQ bldg., off-site use only

Bldg. 00914
Property Number: 21200330118
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: needs rehab, most recent use—safety shelter, off-site use only

Bldg. 00915
Property Number: 21200330119
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 247 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 01189
Property Number: 21200330126
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 800 sq. ft., needs rehab, most recent use—range bldg., off-site use only

Army

Maryland

Building

Bldg. E1413
Property Number: 21200330127
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: needs rehab, most recent use—observation tower, off-site use only

Bldg. E3175
Property Number: 21200330134
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1296 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

4 Bldgs.
Property Number: 21200330135
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Location: E3224, E3228, E3230, E3232, E3234
Status: Unutilized
Comments: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only

Bldg. E3241
Property Number: 21200330136
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 592 sq. ft., needs rehab, most recent use—medical res bldg., off-site use only

Army

Maryland

Building

Bldg. E3300
Property Number: 21200330139
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 44,352 sq. ft., needs rehab, most recent use—chemistry lab, off-site use only

Bldg. E3335
Property Number: 21200330144
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E3360, E3362, E3464
Property Number: 21200330145
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 3588/236 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3542
Property Number: 21200330148
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1,146 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldg. E4420
Property Number: 21200330151
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 14,997 sq. ft., needs rehab, most recent use—police bldg., off-site use only

Army

Maryland

Building

4 Bldgs.
Property Number: 21200330154
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Location: E5005, E5049, E5050, E5051
Status: Unutilized
Comments: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldg. E5068
Property Number: 21200330155
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldgs. 05448, 05449
Property Number: 21200330161
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only

Bldg. 05450
Property Number: 21200330162
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Army

Maryland

Building

Bldgs. 05451, 05455
Property Number: 21200330163
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05453
Property Number: 21200330164
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. E5609
Property Number: 21200330167
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5611
Property Number: 21200330168
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

Bldg. E5634
Property Number: 21200330169
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Army

Maryland

Building

Bldg. E5654
Property Number: 21200330171
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5942
Property Number: 21200330176
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only

Bldgs. E5952, E5953
Property Number: 21200330177
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only

Bldgs. E7401, E7402
Property Number: 21200330178
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7407, E7408
Property Number: 21200330179
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only

Army

Maryland

Building

Bldg. 3070A
Property Number: 21200420055
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 2299 sq. ft., most recent use—heat plant, off-site use only

Bldg. E5026
Property Number: 21200420056
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 20,536 sq. ft., most recent use—storage, off-site use only

Bldg. 05261
Property Number: 21200420057
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maintenance, off-site use only

Bldg. E5876
Property Number: 21200440073
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1192 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00688
Property Number: 21200530080
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 24,192 sq. ft., most recent use—ammo, off-site use only

Army

Maryland

Building

Bldg. 04925
Property Number: 21200540091
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1326 sq. ft., off-site use only

Bldg. 00255
Property Number: 21200720052
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 00638
Property Number: 21200720053
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 4295 sq. ft., most recent use—storage, off-site use only

Bldg. 00721
Property Number: 21200720054
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 135 sq. ft., most recent use—storage, off-site use only

Bldgs. 00936, 00937
Property Number: 21200720055
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 2000 sq. ft., most recent use—storage, off-site use only

Army

Maryland

Building

Bldgs. E1410, E1434
Property Number: 21200720056
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 2276/3106 sq. ft., most recent use—laboratory, off-site use only

Bldg. 03240
Property Number: 21200720057
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10,049 sq. ft., most recent use—office, off-site use only

Bldg. E3834
Property Number: 21200720058
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 72 sq. ft., most recent use—office, off-site use only

Bldgs. E4465, E4470, E4480
Property Number: 21200720059
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 17658/16876/17655 sq. ft., most recent use—office, off-site use only

Bldgs. E5137, 05219
Property Number: 21200720060
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 3700/8175 sq. ft., most recent use—office, off-site use only

Army

Maryland

Building

Bldg. E5236
Property Number: 21200720061
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10325 sq. ft., most recent use—storage, off-site use only

Bldg. E5282
Property Number: 21200720062
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 4820 sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. E5736, E5846, E5926
Property Number: 21200720063
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 1069/4171/11279 sq. ft., most recent use—storage, off-site use only

Bldg. E6890
Property Number: 21200720064
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 1 sq. ft., most recent use—impact area, off-site use only

Bldg. 00310
Property Number: 21200820077
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 56516 sq. ft., most recent use—admin., off-site use only

Army

Maryland

Building

Bldg. 00315
Property Number: 21200820078
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 74396 sq. ft., most recent use—mach shop, off-site use only

Bldg. 00338
Property Number: 21200820079
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 45443 sq. ft., most recent use—gnd tran eqp, off-site use only

Bldg. 00360
Property Number: 21200820080
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 15287 sq. ft., most recent use—general inst., off-site use only

Bldg. 00445
Property Number: 21200820081
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 6367 sq. ft., most recent use—lab, off-site use only

Bldg. 00851
Property Number: 21200820082
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 694 sq. ft., most recent use—range bldg., off-site use only

Army

Maryland

Building

Bldg. E1043
Property Number: 21200820083
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 5200 sq. ft., most recent use—lab, off-site use only

Bldg. 01089
Property Number: 21200820084
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 12369 sq. ft., most recent use—veh maint, off-site use only

Bldg. 01091
Property Number: 21200820085
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 2201 sq. ft., most recent use—storage, off-site use only

Bldg. E1386
Property Number: 21200820086
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 251 sq. ft., most recent use—eng/mnt, off-site use only

Army

Maryland

Building

5 Bldgs.
Property Number: 21200820087
Aberdeen Proving Ground
Harford MD
Location: E1440, E1441, E1443, E1445, E1455
Status: Unutilized
Comments: 112 sq. ft., most recent use—safety shelter, off-site use only

Bldgs. E1467, E1485
Property Number: 21200820088
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 160/800 sq. ft., most recent use—storage, off-site use only

Bldg. E1521
Property Number: 21200820090
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. E1570
Property Number: 21200820091
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 47027 sq. ft., most recent use—office, off-site use only

Army

Maryland

Building

Bldg. E1572
Property Number: 21200820092
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1402 sq. ft., most recent use—maint. off-site use only

4 Bldgs.
Property Number: 21200820093
Aberdeen Proving Ground
Harford MD
Location: E1645, E1675, E1677, E1930
Status: Unutilized
Comments: various sq. ft., most recent use—office, off-site use only

Bldgs. E2160, E2184, E2196
Property Number: 21200820094
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 12440/13816 sq. ft., most recent use—storage, off-site use only

Bldg. E2174
Property Number: 21200820095
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 132 sq. ft., off-site use only

Army

Maryland

Building

Bldgs. 02208, 02209
Property Number: 21200820096
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 11566/18085 sq. ft., most recent use—lodging, off-site use only

Bldg. 02353
Property Number: 21200820097
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 19252 sq. ft., most recent use—veh maint, off-site use only

Bldgs. 02482, 02484
Property Number: 21200820098
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 8359 sq. ft., most recent use—gen purp, off-site use only

Bldg. 02483
Property Number: 21200820099
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt, off-site use only

Bldgs. 02504, 02505
Property Number: 21200820100
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 11720/17434 sq. ft., most recent use—lodging, off-site use only

Army

Maryland

Building

Bldgs. 02831, E3488
Property Number: 21200820101
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 576/64 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 2831A
Property Number: 21200820102
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. 03320
Property Number: 21200820103
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 10600 sq. ft., most recent use—admin, off-site use only

Bldg. E3466
Property Number: 21200820104
Aberdeen Proving Ground
Aberdeen MD
Status: Unutilized
Comments: 236 sq. ft., most recent use—protective barrier, off-site use only

Army

Maryland

Building

4 Bldgs.
Property Number: 21200820105
Aberdeen Proving Ground
Harford MD
Location: E3510, E3570, E3640, E3832
Status: Unutilized
Comments: various sq. ft., most recent use—lab, off-site use only

Bldg. E3544
Property Number: 21200820106
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 5400 sq. ft., most recent use—ind waste, off-site use only

Bldgs. E3561, 03751
Property Number: 21200820107
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 64/189 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 03754
Property Number: 21200820108
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 324 sq. ft., most recent use—classroom, off-site use only

Army

Maryland

Building

Bldg. 3823A
Property Number: 21200820109
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 113 sq. ft., most recent use—shed, off-site use only

Bldg. E3948
Property Number: 21200820110
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 3420 sq. ft., most recent use—emp chg fac, off-site use only

4 Bldgs.
Property Number: 21200820111
Aberdeen Proving Ground
Harford MD
Location: E5057, E5058, E5246, 05258
Status: Unutilized
Comments: various sq. ft., most recent use—storage, off-site use only

Bldgs. E5106, 05256
Property Number: 21200820112
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 18621/8720 sq. ft., most recent use—office, off-site use only

Army

Maryland

Building

Bldg. E5126
Property Number: 21200820113
Aberdeen Proving Ground

Harford MD
Status: Unutilized
Comments: 17664 sq. ft., most recent use—heat plt, off-site use only

Bldg. E5128
Property Number: 21200820114
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 3750 sq. ft., most recent use—substation, off-site use only

Bldg. E5188
Property Number: 21200820115
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 22790 sq. ft., most recent use—lab, off-site use only

Bldg. E5179
Property Number: 21200820116
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 47335 sq. ft., most recent use—info sys, off-site use only

Bldg. E5190
Property Number: 21200820117
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 874 sq. ft., most recent use—storage, off-site use only

Army

Maryland

Building

Bldg. 05223
Property Number: 21200820118
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 6854 sq. ft., most recent use—gen rep inst, off-site use only

Bldgs. 05259, 05260
Property Number: 21200820119
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maint, off-site use only

Bldgs. 05263, 05264
Property Number: 21200820120
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 200 sq. ft., most recent use—org space, off-site use only

5 Bldgs.
Property Number: 21200820121
Aberdeen Proving Ground
Harford MD
Location: 05267, E5294, E5327, E5441, E5485
Status: Unutilized
Comments: various sq. ft., most recent use—storage, off-site use only

Army

Maryland

Building

Bldg. E5292
Property Number: 21200820122
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1166 sq. ft., most recent use—comp rep inst, off-site use only

Bldg. E5380
Property Number: 21200820123
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 9176 sq. ft., most recent use—lab, off-site use only

Bldg. E5452
Property Number: 21200820124
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 9623 sq. ft., off-site use only

Bldg. 05654
Property Number: 21200820125
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 38 sq. ft. most recent use—shed, off-site use only

Bldg. 05656
Property Number: 21200820126
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 2240 sq. ft., most recent use—overhead protection off-site use only

Army

Maryland

Building

5 Bldgs.
Property Number: 21200820127
Aberdeen Proving Ground
Harford MD
Location:
E5730, E5738, E5915, E5928, E6875
Status: Unutilized
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. E5770
Property Number: 21200820128
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 174 sq. ft., most recent use—cent wash, off-site use only

Bldg. E5840
Property Number: 21200820129
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 14200 sq. ft., most recent use—lab, off-site use only

Bldg. E5946
Property Number: 21200820130
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 2147 sq. ft., most recent use—igloo str, off-site use only

Army

Maryland

Building

Bldg. E6872
Property Number: 21200820131
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1380 sq. ft., most recent use—dispatch, off-site use only

Bldgs. E7331, E7332, E7333
Property Number: 21200820132
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: most recent use—protective barrier, off-site use only

Bldg. E7821
Property Number: 21200820133
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 3500 sq. ft., most recent use—xmitter bldg, off-site use only

Bldg. 02483
Property Number: 21200920025
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt bldg., off-site use only

Bldg. 03320
Property Number: 21200920026
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10,600 sq. ft., most recent use—admin., off-site use only

Army

Maryland

Building

Bldg. 06186
Property Number: 21201110026
Ft. Detrick
Fredrick MD 21702
Status: Unutilized
Comments: off-site removal only, 14033 sq. ft., current use: communications ctr., bldg. not energy efficient but fair condition

Bldg. 01692
Property Number: 21201110028
Ft. Detrick
Fredrick MD 21702
Status: Unutilized
Comments: off-site removal only, 1000 sq. ft. current use; communications ctr., bldg. is not energy efficient but in fair condition

Land
2 acres
Property Number: 21200640095
Fort Meade
Odenton Rd/Rt 175
Ft. Meade MD 20755
Status: Unutilized
Comments: light industrial

16 acres
Property Number: 21200640096
Fort Meade
Rt 198/Airport Road
Ft. Meade MD 20755
Status: Unutilized
Comments: light industrial

Army

Missouri

Building

Bldg. T1497
Property Number: 21199420441
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000

Status: Underutilized
Comments: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Property Number: 21199420446
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comments: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2385
Property Number: 21199510115
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Status: Excess
Comments: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. 2167
Property Number: 21199820179
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comments: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Army

Missouri

Building

Bldgs. 2192, 2196, 2198
Property Number: 21199820183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comments: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

12 Bldgs
Property Number: 21200410110
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 07036, 07050, 07054, 07102, 07400, 07401, 08245, 08249 08251, 08255, 08257, 08261.
Status: Unutilized
Comments: 7152 sq. ft. 6 plex housing quarters, potential contaminants, off-site use only

6 Bldg
Property Number: 21200410111
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 07044, 07106, 07107, 08260, 08281, 08300
Status: Unutilized
Comments: 9520 sq ft., 8 plex housing quarters, potential contaminants, off-site use only

15 Bldgs
Property Number: 21200410112
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 08242, 08243, 08246–08248, 08250, 08252–08254, 08256, 08258–08259, 08262–08263, 08265
Status: Unutilized
Comments: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only

Army

Missouri

Building

Bldgs. 08283, 08285
Property Number: 21200410113
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 2240 sq ft, 2 plex housing quarters, potential contaminants, off-site use only

15 Bldgs
Property Number: 21200410114
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–0827
Location: 08267, 08269, 08271, 08273, 08275, 08277, 08279, 08290, 08296, 08301
Status: Unutilized
Comments: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldg 09432
Property Number: 21200410115
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 8724 sq ft., 6-plex housing quarters, potential contaminants, off-site use only.

Bldgs. 5006 and 5013
Property Number: 21200430064
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 192 sq. ft., needs repair, most recent use—generator bldg., off-site use only

Army

Missouri

Building

Bldgs. 13210, 13710
Property Number: 21200430065
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 144 sq. ft. each, needs repair, most recent use—communication, off-site use only

Montana

Building

Bldg. 00405
Property Number: 21200130099
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Status: Unutilized
Comments: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Property Number: 21200130100
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Status: Unutilized
Comments: 528 sq. ft., needs rehab, presence of asbestos, security limitations

Bldg. 00001
Property Number: 21200540093
Sheridan Hall USARC
Helena MT 59601
Status: Unutilized
Comments: 19,321 sq. ft., most recent use—Reserve Center

Army

Montana

Building

Bldg. 00003
Property Number: 21200540094
Sheridan Hall USARC
Helena MT 59601
Status: Unutilized
Comments: 1950 sq. ft., most recent use—maintenance/storage

New Mexico

Building

Bldg. 34198
Property Number: 21200230062
White Sands Missile Range
Dona Ana NM 88002
Status: Excess
Comments: 107 sq. ft., most recent use—security, off-site use only

New York

Building

Bldg.1227
Property Number: 21200440074
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Status: Unutilized
Comments: 3800 sq. ft., needs repair, possible asbestos/lead paint, most recent use—maintenance, off-site use only

Army

New York

Building

Bldg. 2218
Property Number: 21200510067
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Status: Unutilized
Comments: 32,000 sq. ft., poor condition, requires major repairs, most recent use—storage/services

7 Bldgs.
Property Number: 21200510068
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Location: 2122, 2124, 2126, 2128, 2106, 2108, 2104
Status: Unutilized
Comments: sq. ft. varies, poor condition, needs major repairs, most recent use—storage/services

Bldg. 1230
Property Number: 21200940014
U.S. Army Garrison
Orange NY 10996
Status: Unutilized
Comments: 4538 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only

Bldg. 4802

Property Number: 21201010019
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 3300 sq. ft., most recent use—hdgts. facility, off-site use only

Bldgs. 4813
Property Number: 21201010020
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 750 sq. ft., most recent use—wash rack, off-site use only

Army

New York

Building

Bldg. 4814
Property Number: 21201010021
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 2592 sq. ft., most recent use—item repair, off-site use only

Bldgs. 1240, 1255
Property Number: 21201010022
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: various sq. ft., most recent use—vehicle maint. facility, off-site use only

6 Bldgs.
Property Number: 21201010023
Fort Drum
Jefferson NY 13602
Location: 1248, 1250, 1276, 2361, 4816, 4817
Status: Unutilized
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. 1050
Property Number: 21201010024
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 1493 sq. ft., most recent use—training, off-site use only

Army

New York

Building

Bldg. 10791
Property Number: 21201010025
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 72 sq. ft., most recent use—smoking shelter, off-site use only

6 Bldgs.
Property Number: 21201110049
Ft. Drum
Watertown NY 13602
Location: 01000, 01001, 01003,01008,01010,01012
Status: Underutilized
Comments: off-site removal only, multiple bldgs. w/varies sq.ft. current use varies

21 Bldgs.
Property Number: 21201140026
Ft. Drum
Ft. Drum NY 13602
Location: 10280, 10281, 10282, 10283, 10284, 10285, 10286, 10288, 10289, 10290, 10291, 10503, 10504, 10505, 10506, 10590, 10591, 10592, 10593, 10594, 10595
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: concrete pad

Bldg. 02713
Property Number: 21201140028
Ft. Drum
Ft. Drum NY 13602
Status: Underutilized
Comments: off-site removal only; 1,029 sq. ft.; need major repairs; current use: Administrative office

Army

New York

Building

2 Bldgs.
Property Number: 21201140030
Ft. Drum
Ft. Drum NY 13602
Location: 1444 and 1445
Status: Underutilized
Comments: off-site removal only; bldg. 1444 = 4,166 sq. ft.; bldg. 1445 = 7,219 sq. ft.; current use: varies; need extensive repairs to both bldgs.

Ohio

Land

Land
Property Number: 21200340094
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Status: Excess
Comments: 11 acres, railroad access

Oklahoma

Building

Bldg. T–838, Fort Sill
Property Number: 21199220609
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
Property Number: 21199240659
954 Quintet Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Army

Oklahoma

Building

Bldg. T–3325, Fort Sill
Property Number: 21199240681
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T–4226
Property Number: 21199440384
Fort Sill
Lawton Co: Comanche OK 73503
Status: Unutilized
Comments: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015, Fort Sill
Property Number: 21199520197
Lawton Co: Comanche OK 73501–5100
Status: Unutilized
Comments: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366, Fort Sill
Property Number: 21199610740
Lawton Co: Comanche OK 73503
Status: Unutilized
Comments: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building P–5042
Property Number: 21199710066
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 119 sq. ft., possible asbestos and lead paint, most recent use—heat plant, off-site use only

Army

Oklahoma

Building

4 Buildings
Property Number: 21199710086
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Status: Unutilized
Comments: various sq. ft., possible asbestos and lead paint, most recent use—range support, off site use only

Bldg. T–810
Property Number: 21199730350
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldgs. T–837, T–839
Property Number: 21199730351
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, offsite use only

Bldg. P–934
Property Number: 21199730353
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1468, T–1469
Property Number: 21199730357
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470
Property Number: 21199730358
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1954, T–2022
Property Number: 21199730362

Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, offsite use only

Bldg. T–2184
Property Number: 21199730364
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Army

Oklahoma

Building

Bldgs. T–2186, T–2188, T–2189
Property Number: 21199730366
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1656–3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187
Property Number: 21199730367
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thru T–2296
Property Number: 21199730372
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–3001, T–3006
Property Number: 21199730383
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Army

Oklahoma

Building

Bldg. T–3314
Property Number: 21199730385
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5041
Property Number: 21199730409
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Property Number: 21199730414
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldg. T–7775
Property Number: 21199730419
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

Army

Oklahoma

Building

4 Bldgs.
Property Number: 21199910133
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–746
Property Number: 21199910135
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2582
Property Number: 21199910141
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2914
Property Number: 21199910146
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–5101
Property Number: 21199910153
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Army

Oklahoma

Building

Bldg. S–6430
Property Number: 21199910156
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Property Number: 21199910157
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6462
Property Number: 21199910158
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P–7230
Property Number: 21199910159
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only

Army

Oklahoma

Building

Bldg. S–4023
Property Number: 21200010128
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–747
Property Number: 21200120120
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only

Bldg. P–842
Property Number: 21200120123
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–911
Property Number: 21200120124
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–1672
Property Number: 21200120126
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Army

Oklahoma

Building

Bldg. S–2362
Property Number: 21200120127
Fort Sill
Lawton Co: Comanche OK 73503–5100

Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only

Bldg. P–2589
Property Number: 21200120129
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 00937, 00957
Property Number: 21200710104
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 1558 sq. ft., most recent use—storage shed off-site use only

Bldg.01514
Property Number: 21200710105
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 1602 sq. ft., most recent use—storage, off-site use only

Bldg. 05685
Property Number: 21200820152
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 24,072 sq. ft., concrete block/w brick, off-site use only

Army

Oklahoma

Building

Bldg. 07480
Property Number: 21200920002
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 1200 sq. ft., most recent use—recreation, off-site use only

Bldgs. 01509, 01510
Property Number: 21200920060
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: various sq. ft., most recent use—vehicle maint. shop, off-site use only

4 Bldgs.
Property Number: 21200920061
Fort Sill
2591, 2593, 2595, 2604
Lawton OK 73501
Status: Unutilized
Comments: various sq. ft., most recent use—classroom/admin, off-site use only

Bldg. 06456
Property Number: 21200930003
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 413 sq. ft. range support facility, off-site use only

Army

Oklahoma

Building

Fort Sill (5 Bldgs.)
Property Number: 21201110022
2583–87 Currie Road
Lawton Co: Comanche OK 73501–5100
Location: Bldgs: 02583, 02584, 02585, 02586, 02587
Status: Unutilized
Comments: Off-site removal only, sq. ft. varies; current use varies

Fort Sill (5 Bldgs.)
Property Number: 21201110023
Currie Road
Lawton Co: Comanche OK 73501–5100
Location: Bldgs. 02588, 02769, 02770, 02771, 02950
Status: Unutilized
Comments: Off-site removal only, sq. ft. varies; current use varied

Bldgs. 02990 & 05020
Property Number: 21201110024
Fort Sill
Lawton Co: Comanche OK 73501–5100
Status: Unutilized
Comments: Off-site removal only, bldg. 02990—3,715 sq. ft. and bldg. 05020—6,682 sq. ft.; current use fast food facility and storage

Army

South Carolina

Building

Bldg. M7511
Property Number: 21201140017
Ft. Jackson
Ft. Jackson SC 29207
Status: Unutilized
Comments: 220 sq. ft.; current use: sep/toil/shower; needs repairs; control access gates

Bldg. 3499 Property Number: 21201140018
Ft. Jackson
Ft. Jackson SC 29207
Status: Underutilized
Comments: 1,871 sq. ft.; current use: office space; need repairs; control access gates

Bldg. 02464
Property Number: 21201140021
Ft. Jackson
Ft. Jackson SC 29207
Status: Underutilized
Comments: 27,048 sq. ft.; current use: lodging; limitations w/Ft. Jackson controlled access points

Bldg. 02785
Property Number: 21201140022
Ft. Jackson
Ft. Jackson SC 29207
Status: Unutilized
Comments: 80,130 sq. ft.; current use: UOQ military; limitations w/Ft. Jackson controlled access points

Army

South Carolina

Building

6 Bldgs.
Property Number: 21201140023
Ft. Jackson
Ft. Jackson SC 29207
Location: 02102, 02103, 02105, 02106, 02107, 02108
Status: Underutilized
Comments: sq. ft. varies; current use: classroom to trainee bks.; need repairs; limitations w/controlled access points

M7512
Property Number: 21201140025
Ft. Jackson
Ft. Jackson SC 29207
Status: Underutilized
Comments: 220 sq. ft.; current use: sep/toil/shower; need repairs; control access gates

South Dakota

Building

Bldg. 03001
Property Number: 21200740187
Jonas H. Lien AFRC
Sioux Falls SD 57104
Status: Unutilized
Comments: 33282 sq. ft., most recent use—training center

Bldg. 03003
Property Number: 21200740188
Jonas H. Lien AFRC
Sioux Falls SD 57104
Status: Unutilized
Comments: 4675 sq. ft., most recent use—vehicle maint. shop

Army

Tennessee

Land

Parcel No. 1
Property Number: 21200920003
Fort Campbell
Tract No. 13M–3
Montgomery TN 42223
Status: Excess
Comments: 6.89 acres/thick vegetation

Parcel No. 2
Property Number: 21200920004
Fort Campbell
Tract Nos.12M–16B & 13M–3
Montgomery TN 42223
Status: Excess
Comments: 3.41 acres/wooded

Parcel No. 3
Property Number: 21200920005
Fort Campbell
Tract No. 12M–4
Montgomery TN 42223
Status: Excess
Comments: 6.56 acre/wooded

Parcel No. 4
Property Number: 21200920006
Fort Campbell
Tract Nos 10M–22 &10M–23
Montgomery TN 42223
Status: Excess
Comments: 5.73 acres/wooded

Army

Tennessee

Land

Parcel No. 5
Property Number: 21200920007
Fort Campbell
Tract No. 10M–20
Montgomery TN 42223
Status: Excess
Comments: 3.86 acres/wooded

Parcel No. 7
Property Number: 21200920008
Fort Campbell
Tract No. 10M–10
Montgomery TN 42223
Status: Excess
Comments: 9.47 acres/wooded

Parcel No. 8

Property Number: 21200920009
Fort Campbell
Tract No. 8M–7
Montgomery TN 42223
Status: Excess
Comments: 15.13 acres/wooded

Parcel No. 6
Property Number: 21200940013
Fort Campbell
Hwy 79
Montgomery TN 42223
Status: Excess
Comments: 4.55 acres, wooded w/dirt road/fire break

Army

Texas

Building

Bldg. 7137, Fort Bliss
Property Number: 21199640564
El Paso Co: El Paso TX 79916
Status: Unutilized
Comments: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Bldg. 92043
Property Number: 21200020206
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 450 sq. ft., most recent use—storage, off-site use only

Bldg. 92044
Property Number: 21200020207
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1920 sq. ft., most recent use—admin., off-site use only

Bldg. 92045
Property Number: 21200020208
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 2108 sq. ft., most recent use—maint. off-site use only

Bldg. 56638
Property Number: 21200220151
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Army

Texas

Building

Bldgs. 56703, 56708
Property Number: 21200220152
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1306 sq. ft., most recent use—shower, off-site use only

Bldg. 56758
Property Number: 21200220154
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. P6220, P6222
Property Number: 21200330197
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldgs. P6224, P6226
Property Number: 21200330198
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

Army

Texas

Building

Bldg. 92039
Property Number: 21200640101
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Excess
Comments: 80 sq. ft., most recent use—storage, off-site use only

Bldgs. 04281, 04283
Property Number: 21200720085
Fort Hood
Bell TX 76544
Status: Excess
Comments: 4000/8020 sq. ft., most recent use—storage shed off-site use only

Bldg. 04284
Property Number: 21200720086
Fort Hood
Bell TX 76544
Status: Excess
Comments: 800 sq. ft., presence of asbestos, most recent use—storage shed off-site use only

Bldg. 04285
Property Number: 21200720087
Fort Hood
Bell TX 76544
Status: Excess
Comments: 8000 sq. ft., most recent use—storage shed off-site use only

Bldg. 04286
Property Number: 21200720088
Fort Hood
Bell TX 76544
Status: Excess
Comments: 36,000 sq. ft., presence of asbestos, most recent use—storage shed off-site use only

Army

Texas

Building

Bldg. 04291
Property Number: 21200720089
Fort Hood
Bell TX 76544
Status: Excess
Comments: 6400 sq. ft., presence of asbestos, most recent use—storage shed off-site use only

Bldg. 4410
Property Number: 21200720090
Fort Hood
Bell TX 76544
Status: Excess
Comments: 12,956 sq. ft., presence of asbestos, most recent use—simulation center, off-site use only

Bldgs. 10031, 10032, 10033
Property Number: 21200720091
Fort Hood
Bell TX 76544
Status: Excess
Comments: 2578/3383 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 56435
Property Number: 21200720093
Fort Hood
Bell TX 76544
Status: Excess
Comments: 3441 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 05708
Property Number: 21200720094
Fort Hood
Bell TX 76544
Status: Excess
Comments: 1344 sq. ft., most recent use—community center, off-site use only

Army

Texas

Building

Bldg. 93013
Property Number: 21200720099
Fort Hood
Bell TX 76544
Status: Excess
Comments: 800 sq. ft., most recent use—club, off-site use only

4 Bldgs.
Property Number: 21200810048
Fort Hood
Bell TX 76544
Location: 00229, 00230, 00231, 00232
Status: Unutilized
Comments: various sq. ft., presence of asbestos, most recent use—training aids center, off-site use only

Bldg. 00324
Property Number: 21200810049
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 13,319 sq. ft., most recent use—roller skating rink, off-site use only

Bldgs. 00710, 00739, 00741
Property Number: 21200810050
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: various sq. ft., presence of asbestos, most recent use—repair shop, off-site use only

Army

Texas

Building

Bldg. 00713
Property Number: 21200810052
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—hdqts. bldg., off-site use only

Bldgs. 1938, 04229
Property Number: 21200810053
Fort Hood
Bell TX 76544

Status: Unutilized
Comments: 2736/9000 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 02218, 02220
Property Number: 21200810054
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 7289/1456 sq. ft., presence of asbestos, most recent use—museum, off-site use only

Bldg. 0350
Property Number: 21200810055
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 28,290 sq. ft., presence of asbestos, most recent use—veh. maint. shop, off-site use only

Bldg. 04449
Property Number: 21200810056
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 3822 sq. ft., most recent use—police station, off-site use only

Army

Texas

Building

Bldg. 91077
Property Number: 21200810057
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—educational facility, off-site use only

Bldg. 1610
Property Number: 21200810059
Fort Bliss
El Paso TX 79916
Status: Excess
Comments: 11056 sq. ft., concrete/stucco, most recent use—gas station/store, off-site use only

Bldg. 1680
Property Number: 21200810060
Fort Bliss
El Paso TX 79916
Status: Excess
Comments: 3690 sq. ft., concrete/stucco, most recent use—restaurant, off-site use only

Bldg. 57005
Property Number: 21200840073
Fort Hood
Bell TX 76544
Status: Excess
Comments: 500 sq. ft., presence of asbestos, most recent use—water supply/treatment, off-site use only

Army

Texas

Land

1 acre
Property Number: 21200440075
Fort Sam Houston
San Antonio Co: Bexar TX 78234
Status: Excess
Comments: 1 acre, grassy area

Utah

Building

Bldg. 00001
Property Number: 21200740196
Borgstrom Hall USARC
Ogden UT 84401
Status: Excess
Comments: 16543 sq. ft., most recent use—training center, off-site use only

Bldg. 00002
Property Number: 21200740197
Borgstrom Hall USARC
Ogden UT 84401
Status: Excess
Comments: 3842 sq. ft., most recent use—vehicle maint. shop, off-site use only

Bldg. 00005
Property Number: 21200740198
Borgstrom Hall USARC
Ogden UT 84401
Status: Excess
Comments: 96 sq. ft., most recent use—storage, off-site use only

Army

Virginia

Building

Fort Story
Property Number: 21200720065
Ft. Story VA 23459
Status: Unutilized
Comments: 525 sq. ft., most recent use—power plant, off-site use only

Bldg. 01633
Property Number: 21200720076
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Comments: 240 sq. ft., most recent use—storage, off-site use only

Bldg. 02786
Property Number: 21200720084
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Comments: 1596 sq. ft., most recent use—admin., off-site use only

Bldg. P0838
Property Number: 21200830005
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Comments: 576 sq. ft., most recent use—rec shelter, off-site use only

Bldgs. 00031 & 00017
Property Number: 21201140039
8000 Jefferson Davis Hwy
Richmond Co: Chesterfield VA 23297
Status: Underutilized
Comments: off-site removal only; sq. ft. varies; bldgs. in good condition; current use: Admin./warehouse

Army

Washington

Building

Bldg. CO909, Fort Lewis
Property Number: 21199630205
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1164, Fort Lewis
Property Number: 21199630213
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 1307, Fort Lewis
Property Number: 21199630216
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309, Fort Lewis
Property Number: 21199630217
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167, Fort Lewis
Property Number: 21199630218
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Army

Washington

Building

Bldg. 4078, Fort Lewis
Property Number: 21199630219
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 9599, Fort Lewis
Property Number: 21199630220
Ft. Lewis Co: Pierce WA 98433–9500
Status: Unutilized
Comments: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
Property Number: 21199640570
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. EO347
Property Number: 21199710156
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. B1008, Fort Lewis
Property Number: 21199720216
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Army

Washington

Building

Bldgs. CO509, CO709, CO720
Property Number: 21199810372

Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only

Bldg. 5162
Property Number: 21199830419
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 5224
Property Number: 21199830433
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. U001B
Property Number: 21199920237
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Army

Washington

Building

Bldg. U001C
Property Number: 21199920238
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.
Property Number: 21199920239
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Property Number: 21199920240
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U003A, U004B, U006C, U015B, U016B, U019B
Status: Unutilized
Comments: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Property Number: 21199920241
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Army

Washington

Building

Bldg. U005A
Property Number: 21199920242
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Property Number: 21199920245
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Status: Excess
Comments: needs repair, presence of asbestos/lead paint, most recent use—of/tower/support, off-site use only

Bldg. U015J
Property Number: 21199920246
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Property Number: 21199920247
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Army

Washington

Building

Bldg. U018C
Property Number: 21199920248
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024D
Property Number: 21199920250
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Property Number: 21199920251
Fort Lewis
Ft. Lewis Co: Pierce WA
Status: Excess
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldg. U031A
Property Number: 21199920253
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Army

Washington

Building

Bldg. U031C
Property Number: 21199920254
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D
Property Number: 21199920255
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Property Number: 21199920256
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Property Number: 21199920257
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Army

Washington

Building

Bldg. U035C
Property Number: 21199920258
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Property Number: 21199920259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Property Number: 21199920260
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Property Number: 21199920261
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Army

Washington

Building

Bldg. U043A
Property Number: 21199920262
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Property Number: 21199920263
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only

Bldg. U052E
Property Number: 21199920264
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Property Number: 21199920265
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Army

Washington

Building

3 Bldgs.
Property Number: 21199920266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U058A, U103A, U018A
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Property Number: 21199920267
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only

Bldg. U093B
Property Number: 21199920268
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Property Number: 21199920269
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U101B, U101C, U507B, U557A
Status: Excess
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Army

Washington

Building

Bldg. U110B
Property Number: 21199920272
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Property Number: 21199920273
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location: U111A, U015A, U024E, U052F, U109A, U110A
Status: Excess
Comments: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Property Number: 21199920274
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A
Property Number: 21199920275
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, offsite use only

Army

Washington

Building

Bldg. U507A
Property Number: 21199920276
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. C0120
Property Number: 21199920281
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. 01205
Property Number: 21199920290
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Property Number: 21199920291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, offsite use only

Army

Washington

Building

Bldg. 01266
Property Number: 21199920292
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, offsite use only

Bldg. 1445
Property Number: 21199920294
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldgs. 03091, 03099
Property Number: 21199920296
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 4040
Property Number: 21199920298
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, offsite use only

Army

Washington

Building

Bldgs. 4072, 5104
Property Number: 21199920299
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Property Number: 21199920300
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, offsite use only

Bldg. 6191
Property Number: 21199920303
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Property Number: 21199920304
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 3660/412 sq .ft., needs repair, presence of asbestos/lead paint, off-site use only

Army

Washington

Building

Bldg. 08093
Property Number: 21199920305
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Property Number: 21199920306
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291
Property Number: 21199920307
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Property Number: 21199920308
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Army

Washington

Building

Bldg. 9530
Property Number: 21199920309
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Property Number: 21199920310
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop. off-site use only

Bldg. 9596 Property Number: 21199920311
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

COE

California

Building

4 Bldgs.
Property Number: 31200840001
OTH–B Radar Site
Tulelake CA 91634
Status: Unutilized
Comments: most recent use—communications/vehicle maint. off-site use only

Kentucky

Building

Green River Lock #3
Property Number: 31199010022
Rochester Co: Butler KY 42273
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Status: Unutilized
Comments: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

COE

Montana

Building

Bldg. 1
Property Number: 31200040010
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only

Bldg. 2
Property Number: 31200040011
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 3292 sq. ft., most recent use—cold storage, off-site use only

Bldg. 3
Property Number: 31200040012
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 964 sq. ft., most recent use—cold storage, off-site use only

Bldg. 4
Property Number: 31200040013
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 72 sq. ft., most recent use—cold storage, off-site use only

Bldg. 5
Property Number: 31200040014
Butte Natl Guard
Butte Co: Silverbow MT 59701
Status: Unutilized
Comments: 1286 sq. ft., most recent use—cold storage, off-site use only

COE

Ohio

Building

Barker Historic House
Property Number: 31199120018
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Status: Unutilized
Comments: 1600 sq. ft. bldg. with ½ acre of land, 2-story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only

Oklahoma

Land

Pine Creek Lake
Property Number: 31199010923
Section 27
(See County) Co: McCurtain OK
Status: Unutilized
Comments: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Building

Mahoning Creek Reservoir
Property Number: 31199210008
New Bethlehem Co: Armstrong PA 16242
Status: Unutilized
Comments: 1015 sq. ft., 2 story brick residence, off-site use only

Dwelling Property Number: 31199620008
Lock 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Status: Unutilized
Comments: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes

COE

Pennsylvania

Building

Dwelling
Property Number: 31199710009
Lock 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Status: Unutilized
Comments: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only

Dwelling #1
Property Number: 31199740002
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comments: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Property Number: 31199740003
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Status: Excess
Comments: 3045 sq. ft., most recent use—residential, good condition, off-site use only

Govt Dwelling
Property Number: 31199740005
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Status: Underutilized
Comments: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only

Dwelling #1
Property Number: 31199740006
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comments: 1996 sq. ft., most recent use—residential, good condition, off-site use only

COE

Pennsylvania

Building

Dwelling #2
Property Number: 31199740007
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Status: Excess
Comments: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Property Number: 31199740009
Lock 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Status: Excess
Comments: 2652 sq. ft., most recent use—residential, good condition, off-site use only

Residence A
Property Number: 31200410007
2045 Pohopoco Drive
Lehighton Co: Carbon PA 18235
Status: Unutilized
Comments: 1200 sq. ft., presence of asbestos, off-site use only

BEL–007
Property Number: 31201030001
2145 Pohopco Dr.
Lehighton PA 18235
Status: Unutilized
Comments: 1188 sq. ft., off-site use only

COE

Pennsylvania

Land

Mahoning Creek Lake
Property Number: 31199010018
New Bethlehem Co: Armstrong PA 16242–9603
Location:
Route 28 north to Belknap, Road #4
Status: Excess
Comments: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Property Number: 31199011001
Shenango River Lake
Sharpsville Co: Mercer PA 16150
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Status: Excess
Comments: 24.09 acres; subject to flowage easement

Tracts L24, L26
Property Number: 31199011011
Crooked Creek Lake
Co: Armstrong PA 03051
Location: Left bank—55 miles downstream of dam.
Status: Unutilized
Comments: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Property Number: 31199430012
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226
Status: Unutilized
Comments: Approximately 1.72 acres of undeveloped land, subject to gas rights

COE

South Dakota

Land

Portion/Tract A127
Property Number: 31200940001
Gavins Point Dam
Yankton SD
Status: Unutilized
Comments: 0.3018 acre, road right of way

Coast Guard

Connecticut

Building

USCG Academy's Visitor Ctr.
Property Number: 88201110001
31 Monhegan Ave.
New London CT 06320
Status: Underutilized
Comments: Off-site Removal Only, 2,300 sq. ft., most recent use: storage, HVAC system needs major repair

Washington

Building

Small Arms Firing Range
Property Number: 88201140003
322 Coast Guard Rd
Ilwaco WA
Status: Unutilized
Comments: off-site removal only; 2,640 sq. ft.; current use: firing range; lead around bld.; need repairs

Energy

Illinois

Building

Trailer 035
Property Number: 41201140002
Fermi Nat'l Accelerator Lab
Batavia IL 60510
Status: Excess
Comments: off-site removal only; 480 sq. ft.; current use: storage; needs major repairs

GSA

Arkansas

Building

99 Shore Court Structure
Property Number: 54201140010
99 Shore Court
Hot Springs AR 71901
Status: Surplus
Comments: off-site removal only; 1,845 sq. ft.; current use: residential
GSA Number: 7–I–AR–0415–13

132 Clubb Street Structure
Property Number: 54201140014
132 Clubb Street
Hot Springs AR 71901
Status: Surplus
Comments: Off-site removal only; 1,090 sq. ft.; current use: residential
GSA Number: 7–I–AR–0415–14

California

Land

Seal Beach RR Right of Way
Property Number: 54201140015
West 19th Street
Seal Beach CA 90740
Status: Surplus
Comments: 8,036.82 sq. ft.; current use: vacant lot
GSA Number: 9–N–CA–1508–AF

Seal Beach RR Right of Way
Property Number: 54201140016
East 17th Street
Seal Beach CA 90740
Status: Surplus
Comments: 9,713.88 sq. ft.; current use: private home
GSA Number: 9–N–CA–1508–AB

GSA

California

Land

Seal Beach RR Right of Way
Property Number: 54201140017
East of 16th Street
Seal Beach CA 90740
Status: Surplus
Comments: 6,834.56 sq. ft.; current use: vacant
GSA Number: 9–N–CA–1508–AG

Seal Beach RR Right of Way
Property Number: 54201140018
West of Seal Beach Blvd.
Seal Beach CA 90740
Status: Surplus
Comments: 10,493.60 sq. ft.; current use: vacant lot
GSA Number: 9–N–CA–1508–AA

Illinois

Land

FAA Middle Marker Site
Property Number: 54201140008
467 37th Ave
St. Charles IL 60174
Status: Excess
Comments: Zoning law/bldg. code prohibits construction; 0.135 acres; current use: FAA communications tower
GSA Number: 1–U–IL–798

GSA

Maine

Building

Columbia falls Radar Site
Property Number: 54201140001
Tibbetstown Road
Columbia Falls ME 04623
Location:
Buildings 1, 2, 3, and 4
Status: Excess
Comments: Four bldgs. totaling 20,375 sq.ft. each one-story; current use: varies among properties
GSA Number: 1–D–ME–0687

Michigan

Building

Beaver Island High Level Site
Property Number: 54201140002
South End Road
Beaver Island MI 49782
Status: Excess
Comments: 89 sq. ft; current use: storage; non-friable asbestos and lead base paint present; currently under license to the CCE Central Dispatch Authority
GSA Number: 1–X–MI–664B

Nevada

Land

RBG Water Project Site
Property Number: 54201140004
Bureau of Reclamation
Henderson NV 89011
Status: Surplus
Comments: water easement (will not impact conveyance); 22±acres; current use: water sludge disposal site; lead from shotgun shells on <1 acre.
GSA Number: 9–I–AZ–0562

GSA

North Dakota

Land

Vacant Land of MSR Site
Property Number: 54201130009
Stanley Mickelsen
Nekoma ND
Status: Surplus
Comments: 20.2 acres; recent use: unknown
GSA Number: 7–D–ND–0499

Pennsylvania

Land

Marienville Lot
Property Number: 54201140005
USDA Forest Service
Marienville PA
Status: Excess
Comments: 2.42 acres; current use: unknown
GSA Number: 4–A–PA–807AD

Rhode Island

Building

FDA Davisville Site
Property Number: 54201130008
113 Bruce Boyer Street
North Kingstown RI 02852
Status: Excess
Comments: 4,100 sq. ft.; recent use: storage; property currently has no heating (all repairs is the responsibility of owner)
GSA Number: 1–F–RI–0520

GSA

South Carolina

Land

Marine Corps Air Station
Property Number: 54201140009
3481 TRASK Parkway
Beaufort SC 29904
Status: Excess
Comments: 18,987.60 sq. ft. (.44 acres); physical features: swamp, periodic flooding, 5 ft. off of main road
GSA Number: 4–N–SC–0608AA

South Dakota

Building

Main House
Property Number: 54201130011
Lady C Ranch Rd.
Hot Springs SD 57747
Status: Surplus
Comments: Off-site removal only; The property is a 2-story structure with 1,024 sq. ft. per floor for a total of 2,048 sq. ft.; structure type: Log Cabin; recent use: residential
GSA Number: 7–A–0523–3–AE

Main Garage
Property Number: 54201130012
Lady C Ranch Rd.
Hot Springs SD 57747
Status: Surplus
Comments: Off-site removal only; 567 sq. ft.; structure type: Log Frame; recent use: vehicle storage
GSA Number: 7–A–SD–0523–3–AF

Metal Machine/Work Bldg.
Property Number: 54201130013
Lady C Ranch Rd.
Hot Springs SD 57747
Status: Surplus
Comments: Off-site removal only; 3,280 sq. ft.; structure type: Post/Pole w/Metal Siding; recent use: utility shed
GSA Number: 7–A–SD–0523–3–AG

GSA

South Dakota

Building

Mobile Home
Property Number: 54201130014
Lady C Ranch Rd.
Hot Springs SD 57477
Status: Surplus
Comments: Off-site removal only; 1,152 sq. ft.; structure type: manufactured home/ double wide; recent use: residential
GSA Number: 7–A–0523–3–AH

Mobile Home Garage
Property Number: 54201130015
Lady C Ranch Rd.
Hot Springs SD 57747
Status: Surplus
Comments: Off-site removal only; 729 sq. ft.; structure type: Post/Pole construction w/ metal side; recent use: storage
GSA Number: 7–A–SD–0523–3–AI

Washington

Building

Ran West Bunkhouse
Property Number: 54201140007
418 Sikverbrook Rd.
Randle WA 98377
Status: Excess
Comments: Double wide trailer for off-site removal only; 960 sq. ft.; current use: bunkhouse
GSA Number: 9–A–WA–1258

Interior

Oklahoma

Land

Tract No. 346
Property Number: 61201140009
Bureau of Reclamation
N of Altus OK
Status: Excess
Comments: 1.45 acres; current use: canal

Navy

Alabama

Building

Single Family House
Property Number: 77201110014
NOLF
Evergreen Co: Coneceh AL 36401
Status: Excess
Comments: Off-site removal only, 2,500 sq. ft., recent use: residential, possibility of asbestos and lead-based paint

Maryland

Building

13 Bldgs.
Property Number: 77201140004
Naval Support Facility
Carderock MD
Location: 008, 030, 111, 112, 113, 117, 121, 125, 126, 128, 129, 159, 196
Status: Excess
Comments: Off-site removal only; sq. ft. varies; current use: varies; buildings in fair condition—need repairs

4 Bldgs.
Property Number: 77201140016
Naval Support Activity S. Potomac
Indian Head MD 20640
Location: 696B, 745, 827, 945
Status: Excess
Comments: Off-site removal; need inspections for explosive contaminations; need repairs; possible lead based paint and asbestos; possible trigger disturbance of protected species and impact to coastal resources

VA

Alabama

Land

VA Medical Center
Property Number: 97199010053
VAMC
Tuskegee Co: Macon AL 36083
Status: Underutilized
Comments: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Colorado

Building

Bldg. 2
Property Number: 97200430001
VAMC
2121 North Avenue
Grand Junction Co: Mesa CO 81501
Status: Unutilized
Comments: 3298 sq. ft., needs major rehab, presence of asbestos/lead paint

Bldg. 3
Property Number: 97200430002
VAMC
2121 North Avenue
Grand Junction Co: Mesa CO 81501
Status: Unutilized
Comments: 7275 sq. ft., needs major rehab, presence of asbestos/lead paint

VA

Indiana

Building

Bldg. 105, VAMC
Property Number: 97199230006
East 38th Street
Marion Co: Grant IN 46952
Status: Excess
Comments: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places

Bldg. 10
Property Number: 97199810002
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Underutilized

Comments: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 11
Property Number: 97199810003
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Underutilized
Comments: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 18
Property Number: 97199810004
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Underutilized
Comments: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

VA

Indiana

Building

Bldg. 25
Property Number: 97199810005
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953
Status: Unutilized
Comments: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 1
Property Number: 97200310001
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 20,287 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 3
Property Number: 97200310002
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 20,550 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 4
Property Number: 97200310003
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 20,550 sq .ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

VA

Indiana

Building

Bldg. 13
Property Number: 97200310004
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 8971 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 42
Property Number: 97200310007
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 5025 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 60
Property Number: 97200310008
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 18,126 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 122
Property Number: 97200310009
N. Indiana Health Care System
Marion Co: Grant IN 46952
Status: Unutilized
Comments: 37,135 sq. ft., needs extensive repairs, presence of asbestos, most recent use—dining hall/kitchen

VA

Iowa

Land

40.66 acres
Property Number: 97199740002
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138
Status: Unutilized
Comments: golf course, easement requirements

Wisconsin

Land

VA Medical Center
Property Number: 97199010054
County Highway E
Tomah Co: Monroe WI 54660
Status: Underutilized
Comments: 12.4 acres, serves as buffer between center and private property, no utilities.

TITLE V PROPERTIES REPORTED IN YEAR 2011 WHICH ARE SUITABLE AND UNAVAILABLE

Air Force

Colorado

Building

Bldg. 810—Trailer
Property Number: 18201110005
270 South Aspen Street
Buckley AFB
Aurora Co: Arapahoe CO
Status: Unutilized
Reason: Disposal in progress

Bldg 811—Crews
Trailer Property Number: 18201110008
272 South Aspen Street
Buckley AFB
Aurora Co: Arapahoe CO 80011
Status: Unutilized
Reason: Disposal in progress

Land

Outer Marker Annex
Property Number: 18200940001
Whiteman AFB
Knob Noster MO 65336
Status: Unutilized
Reason: Disposal in progress

Annex No. 3
Property Number: 18201020001
Whiteman AFB
Knob Noster MO 65336
Status: Underutilized
Reason: Disposal in progress

South Dakota

Land

Tract 133
Property Number: 18200310004
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Status: Unutilized
Reason: Special Legislation

Tract 67
Property Number: 18200310005
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Status: Unutilized
Reason: mission purpose

Air Force

Washington

Building

Bldg. 404/Geiger Heights
Property Number: 18200420002
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

11 Bldgs./Geiger Heights
Property Number: 18200420003
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Bldg. 297/Geiger Heights
Property Number: 18200420004
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

9 Bldgs./Geiger Heights
Property Number: 18200420005
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

22 Bldgs./Geiger Heights
Property Number: 18200420006
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Air Force

New York

Building

Bldg. 302
Property Number: 18200340026
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Reason: occupied

Washington

51 Bldgs./Geiger Heights
Property Number: 18200420007
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Bldg. 402/Geiger Heights

Property Number: 18200420008
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

5 Bldgs./Geiger Heights
Property Number: 18200420009
Fairchild AFB
222, 224, 271, 295, 260
Spokane WA 99224
Status: Unutilized
Reason: mission effort

5 Bldgs./Geiger Heights
Property Number: 18200420010
Fairchild AFB
102, 183, 118, 136, 113
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Army

Alabama

Building

Bldg. 01433
Property Number: 21200220098
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Status: Excess
Reason: being utilized

Bldg. 30105
Property Number: 21200510052
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Status: Excess
Reason: occupied

Bldg. 40115
Property Number: 21200510053
Fort Rucker
Ft. Rucker Co: Dale AL 36362
Status: Excess
Reason: occupied

Bldg. 25303
Property Number: 21200520074
Fort Rucker
Dale AL 36362
Status: Excess
Reason: occupied

Bldg. 25304
Property Number: 21200520075
Fort Rucker
Dale AL 36362
Status: Excess
Reason: occupied

Army

Arizona

Building

Bldg. 22529
Property Number: 21200520077
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 22541
Property Number: 21200520078
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 30020
Property Number: 21200520079
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 30021
Property Number: 21200520080
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 22040
Property Number: 21200540076
Fort Huachuca
Cochise AZ 85613
Status: Excess
Reason: occupied

Army

Arizona

Building

Bldg. 22540
Property Number: 21200620067
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Colorado

Building

Bldg. S6285
Property Number: 21200420176
Fort Carson
Ft. Carson Co: El Paso CO 80913
Status: Unutilized
Reason: in use

Georgia

Building

Bldg. T201
Property Number: 21200420002
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T234
Property Number: 21200420008
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Army

Georgia

Building

Bldg. T702
Property Number: 21200420010
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T703
Property Number: 21200420011
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T704
Property Number: 21200420012
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. P813
Property Number: 21200420013
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldgs. S843, S844, S845
Property Number: 21200420014
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Army

Georgia

Building

Bldg. P925
Property Number: 21200420015
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. P1277
Property Number: 21200420024
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. T1412
Property Number: 21200420025
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. 8658
Property Number: 21200420029
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. 8659
Property Number: 21200420030
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Army

Georgia

Building

Bldgs. 8675, 8676
Property Number: 21200420031
Hunter Army Airfield
Garrison Co: Chatham GA 31409
Status: Excess
Reason: in use

Bldg. 5978
Property Number: 21200420038
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5993
Property Number: 21200420041
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5994
Property Number: 21200420042
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5995
Property Number: 21200420043

Fort Benning
Ft. Benning Co: Chattahoochee GA 31905
Status: Excess
Reason: in use

Army

Georgia

Building

Bldg. T01
Property Number: 21200420181
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T04
Property Number: 21200420182
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T05
Property Number: 21200420183
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T06
Property Number: 21200420184
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T55
Property Number: 21200420187
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Army

Georgia

Building

Bldg. T85
Property Number: 21200420188
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T131
Property Number: 21200420189
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T132
Property Number: 21200420190
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T157
Property Number: 21200420191
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 01002
Property Number: 21200420197
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Army

Georgia

Building

Bldg. 01003
Property Number: 21200420198
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19101
Property Number: 21200420215
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19102
Property Number: 21200420216
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T19111
Property Number: 21200420217
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19112
Property Number: 21200420218
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Army

Georgia

Building

Bldg. 19113
Property Number: 21200420219
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T19201
Property Number: 21200420220
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19202
Property Number: 21200420221
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19204 thru 19207
Property Number: 21200420222
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldgs. 19208 thru 19211
Property Number: 21200420223
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Army

Georgia

Building

Bldg. 19212
Property Number: 21200420224
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19213
Property Number: 21200420225
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19214
Property Number: 21200420226
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19215
Property Number: 21200420227
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19216
Property Number: 21200420228
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Army

Georgia

Building

Bldg. 19217
Property Number: 21200420229
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19218
Property Number: 21200420230
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldgs. 19219, 19220
Property Number: 21200420231
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19223
Property Number: 21200420232
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19225
Property Number: 21200420233
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Army

Georgia

Building

Bldg. 19226
Property Number: 21200420234
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. T19228
Property Number: 21200420235
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19229
Property Number: 21200420236
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19232
Property Number: 21200420237
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19233
Property Number: 21200420238
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Army

Georgia

Building

Bldg. 19236
Property Number: 21200420239
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 19238
Property Number: 21200420240
Fort Stewart
Ft. Stewart Co: Liberty GA 31314
Status: Excess
Reason: in use

Bldg. 01674
Property Number: 21200510056
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 01675
Property Number: 21200510057
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 01676
Property Number: 21200510058
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Army

Georgia

Building

Bldg. 01677
Property Number: 21200510059
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Reason: occupied

Bldg. 01678
Property Number: 21200510060
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905
Status: Unutilized
Reason: occupied

Bldg. 00051
Property Number: 21200520087
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00052
Property Number: 21200520088
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00053
Property Number: 21200520089
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Army

Georgia

Building

Bldg. 00054
Property Number: 21200520090
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 01243
Property Number: 21200610040
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Reason: occupied

Bldg. 01244
Property Number: 21200610041
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Reason: occupied

Bldg. 01318
Property Number: 21200610042
Hunter Army Airfield
Savannah Co: Chatham GA 31409
Status: Excess
Reason: occupied

Bldg. 00612
Property Number: 21200610043
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Army

Georgia

Building

Bldg. 00614
Property Number: 21200610044
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00618
Property Number: 21200610045
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 00628
Property Number: 21200610046
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 01079
Property Number: 21200610047
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 07901
Property Number: 21200610049
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Army

Georgia

Building

Bldg. 08031
Property Number: 21200610050
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 08081
Property Number: 21200610052
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Bldg. 08252
Property Number: 21200610053
Fort Stewart
Liberty GA 31314
Status: Excess
Reason: occupied

Louisiana

Building

Bldg. T401
Property Number: 21200540084
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

Bldgs. T406, T407, T411
Property Number: 21200540085
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

Army

Louisiana

Building

Bldg. T412
Property Number: 21200540086
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

Bldgs. T414, T421
Property Number: 21200540087
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

Maryland

Building

Bldg. 8608
Property Number: 21200410099

Fort George G. Meade
Ft. Meade MD 20755–5115
Status: Unutilized
Reason: occupied

Bldg. 8612
Property Number: 21200410101
Fort George G. Meade
Ft. Meade MD 20755–5115
Status: Unutilized
Reason: occupied

Bldg. 0001A
Property Number: 21200520114
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Army

Maryland

Building

Bldg. 0001C
Property Number: 21200520115
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Bldgs. 00032, 00H14, 00H24
Property Number: 21200520116
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Bldgs. 00034, 00H016
Property Number: 21200520117
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Bldgs. 00H10, 00H12
Property Number: 21200520118
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Army

Michigan

Building

Bldg. 00001
Property Number: 21200510066
Sheridan Hall USARC
501 Euclid Avenue
Helena Co: Lewis MI 59601–2865
Status: Unutilized
Reason: Federal interest

Missouri

Building

Bldg. 1230
Property Number: 21200340087
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 1621
Property Number: 21200340088
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5760
Property Number: 21200410102
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5762
Property Number: 21200410103
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Army

Missouri

Building

Bldg. 5763
Property Number: 21200410104
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Army

Missouri

Building

Bldg. 5765
Property Number: 21200410105
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5760
Property Number: 21200420059
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Bldg. 5762
Property Number: 21200420060
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Bldg. 5763
Property Number: 21200420061
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Army

Missouri

Building

Bldg. 5765
Property Number: 21200420062
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Bldg. 00467
Property Number: 21200530085
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743
Status: Unutilized
Reason: occupied

New York

Building

Bldgs. 1511–1518
Property Number: 21200320160
U.S. Military Academy Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1523–1526
Property Number: 21200320161
U.S. Military Academy Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1704–1705, 1721–1722
Property Number: 21200320162
U.S. Military Academy Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Army

New York

Building

Bldg. 1723
Property Number: 21200320163
U.S. Military Academy Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1706–1709
Property Number: 21200320164
U.S. Military Academy Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1731–1735
Property Number: 21200320165
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

North Carolina

Building

Bldg. N4116
Property Number: 21200240087
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310
Status: Excess
Reason: mission use

Army

Texas

Building

Bldgs. 4219, 4227
Property Number: 21200220139
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldgs. 4229, 4230, 4231
Property Number: 21200220140
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldgs. 4244, 4246
Property Number: 21200220141
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldgs. 4260, 4261, 4262
Property Number: 21200220142

Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldg. 04335
Property Number: 21200440090
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Army

Texas

Building

Bldg. 04465
Property Number: 21200440094
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04468
Property Number: 21200440096
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 04475–04476
Property Number: 21200440098
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04477
Property Number: 21200440099
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 07002
Property Number: 21200440100
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Army

Texas

Building

Bldg. 57001
Property Number: 21200440105
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 125, 126
Property Number: 21200620075
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 02240
Property Number: 21200620078
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04164
Property Number: 21200620079
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 04218, 04228
Property Number: 21200620080
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Army

Texas

Building

Bldg. 04272
Property Number: 21200620081
Fort Hood
Bell TX 76544
Status: Excess
Reason: not occupied

Bldg. 04415
Property Number: 21200620083
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

4 Bldgs.
Property Number: 21200620084
Fort Hood
04419, 04420, 04421, 04424
Bell TX 76544
Status: Excess
Reason: occupied

4 Bldgs.
Property Number: 21200620085
Fort Hood
04425, 04426, 04427, 04429
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04430
Property Number: 21200620087
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Army

Texas

Building

Bldg. 04434
Property Number: 21200620088
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 04470, 04471
Property Number: 21200620090
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04493
Property Number: 21200620091
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04494
Property Number: 21200620092
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04632
Property Number: 21200620093
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Army

Texas

Building

Bldg. 04640
Property Number: 21200620094
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04645
Property Number: 21200620095
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04906
Property Number: 21200620096
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 20121
Property Number: 21200620097
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 91052
Property Number: 21200620101
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Army

Texas

Building

Bldg. 1345
Property Number: 21200740070
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 1348, 1941
Property Number: 21200740071
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 1919
Property Number: 21200740072
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 1943
Property Number: 21200740073
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 1946
Property Number: 21200740074
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Army

Texas

Building

Bldg. 4207
Property Number: 21200740076
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 4208
Property Number: 21200740077
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 4210, 4211, 4216
Property Number: 21200740078
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 4219A
Property Number: 21200740079
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04252
Property Number: 21200740081
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Army

Texas

Building

Bldg. 4255
Property Number: 21200740082
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04480
Property Number: 21200740083
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04485
Property Number: 21200740084
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04489
Property Number: 21200740086
Fort Hood
Ft. Hood TX 76544
Status: Excess
Reason: utilized

Bldgs. 4491, 4492
Property Number: 21200740087
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Army

Texas

Building

Bldgs. 04902, 04905
Property Number: 21200740088
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 04914, 04915, 04916
Property Number: 21200740089
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 20102
Property Number: 21200740091
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 20118
Property Number: 21200740092
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 29027
Property Number: 21200740093
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Army

Texas

Building

Bldg. 56017
Property Number: 21200740094
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56202
Property Number: 21200740095
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56224
Property Number: 21200740096
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56305
Property Number: 21200740097
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56311
Property Number: 21200740098
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Army

Texas

Building

Bldg. 56329
Property Number: 21200740100
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 92043
Property Number: 21200740102
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 92072
Property Number: 21200740103
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 92083
Property Number: 21200740104
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 04213, 04227
Property Number: 21200740189
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Army

Texas

Building

Bldg. 4404
Property Number: 21200740190
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56607
Property Number: 21200740191
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 91041
Property Number: 21200740192
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

5 Bldgs.
Property Number: 21200740193
Fort Hood
93010, 93011, 93012, 93014
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 94031
Property Number: 21200740194
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Army

Virginia

Building

Bldg. T2827
Property Number: 21200320172
Fort Pickett
Blackstone Co: Nottoway VA 23824
Status: Unutilized
Reason: occupied

Bldg. T2841
Property Number: 21200320173
Fort Pickett
Blackstone Co: Nottoway VA 23824

Status: Unutilized
Reason: occupied

Bldg. 01014
Property Number: 21200720067
Fort Story
Ft. Story VA 23459
Status: Unutilized
Reason: occupied

Bldg. 01063
Property Number: 21200720072
Fort Story
Ft. Story VA 23459
Status: Unutilized
Reason: occupied

Bldg. 00215
Property Number: 21200720073
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Army

Virginia

Building

4 Bldgs.
Property Number: 21200720074
Fort Eustis
01514, 01523, 01528, 01529
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

4 Bldgs.
Property Number: 21200720075
Fort Eustis
01534, 01542, 01549, 01557
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldgs. 01707, 01719
Property Number: 21200720077
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldg. 01720
Property Number: 21200720078
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldgs. 01721, 01725
Property Number: 21200720079
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Army

Virginia

Building

Bldgs. 01726, 01735, 01736
Property Number: 21200720080
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldgs. 01734, 01745, 01747
Property Number: 21200720081
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldg. 01741
Property Number: 21200720082
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldg. 02720
Property Number: 21200720083
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Army

Washington

Building

Bldg. 05904
Property Number: 21200240092
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Status: Excess
Reason: mission use

COE

Illinois

Building

Bldg. 7
Property Number: 31199010001
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability

Bldg. 6
Property Number: 31199010002
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability

Bldg. 5
Property Number: 31199010003
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability

Bldg. 4
Property Number: 31199010004
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability

Bldg. 3
Property Number: 31199010005
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability

COE

Illinois

Building

Bldg. 2
Property Number: 31199010006
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability

Bldg. 1
Property Number: 31199010007
Ohio River Locks No. 53
Grand Chain Co: Pulaski IL 62941–9801
Status: Unutilized
Reason: Project integrity and security; safety liability

Kentucky

Land

Tract 2625
Property Number: 31199010025
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 2709–10 and 2710–2
Property Number: 31199010026
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 2708–1 and 2709–1
Property Number: 31199010027
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Status: Excess
Reason: landholding agency needs property after the floods of 2010

COE

Kentucky

Land

Tract 2800
Property Number: 31199010028
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 4318
Property Number: 31199010032
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 4502
Property Number: 31199010033
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 4611
Property Number: 31199010034
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 4619
Property Number: 31199010035
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Status: Excess
Reason: landholding agency needs property after the floods of 2010

COE

Kentucky

Land

Tract 4817

Property Number: 31199010036
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 1906
Property Number: 31199010044
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 2001 #1
Property Number: 31199010046
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 2001 #2
Property Number: 31199010047
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 2005
Property Number: 31199010048
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Status: Excess
Reason: landholding agency needs property after the floods of 2010

COE

Kentucky

Land

Tract 2307
Property Number: 31199010049
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 2403
Property Number: 31199010050
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 2504
Property Number: 31199010051
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 214
Property Number: 31199010052
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 241
Property Number: 31199010054
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Status: Excess
Reason: landholding agency needs property after the floods of 2010

COE

Kentucky

Land

Tracts 306, 311, 315 and 325
Property Number: 31199010055
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tracts 2305, 2306, and 2400–1
Property Number: 31199010056
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tracts 5203 and 5204
Property Number: 31199010058
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 5240
Property Number: 31199010059
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 4619–B
Property Number: 31199011622
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Status: Excess
Reason: landholding agency needs property after the floods of 2010

COE

Kentucky

Land

Tract 2403–B
Property Number: 31199011623
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038
Status: Unutilized
Reason: landholding agency needs property after the floods of 2010

Tracts 212 and 237
Property Number: 31199011625
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 233
Property Number: 31199011627
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Ohio

Building

Bldg.—Berlin Lake Property
Number: 31199640001
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Status: Unutilized
Reason: utilized as construction office

COE

Pennsylvania

Building

Tract 403A
Property Number: 31199430021
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Status: Unutilized
Reason: To be transferred to Borough

Tract 403B
Property Number: 31199430022
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Status: Unutilized
Reason: To be transferred to Borough

Tract 403C
Property Number: 31199430023
Grays Landing Lock Project
Greensboro Co: Greene PA 15338
Status: Unutilized
Reason: To be transferred to Borough

Land

East Branch Clarion River Lake
Property Number: 31199011012
Wilcox Co: Elk PA
Status: Underutilized
Reason: Location near damsite

Dashields Locks and Dam
Property Number: 31199210009
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Status: Unutilized
Reason: Leased to Township

COE

Tennessee

Land

Tracts K–1191, K–1135
Property Number: 31199130007
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074
Status: Underutilized
Reason: landholding agency needs property after the floods of 2010

Tract 6827
Property Number: 31199010927
Barkley Lake
Dover Co: Stewart TN 37058
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tracts 6002–2 and 6010
Property Number: 31199010928
Barkley Lake
Dover Co: Stewart TN 37058
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 11516
Property Number: 31199010929
Barkley Lake
Ashland City Co: Dickson TN 37015
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 2319
Property Number: 31199010930
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 2227
Property Number: 31199010931
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Status: Excess
Reason: landholding agency needs property after the floods of 2010

COE

Tennessee

Land

Tract 2915
Property Number: 31199010029
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Location: 6½ miles west of Cadiz
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 2702
Property Number: 31199010031
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211
Location: 1 mile in a southerly direction from the village of Rockcastle
Status: Excess
Reason: landholding agency needs property after the floods of 2010

COE

Kentucky

Land

Tract 1217
Property Number: 31199010042
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030
Location: On the north side of the Illinois Central Railroad
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 1907
Property Number: 31199010045
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 215
Property Number: 31199010053
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: 5 miles southwest of Kuttawa
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 4628
Property Number: 31199011621
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212
Location: 4½ miles south from Canton, KY
Status: Excess
Reason: landholding agency needs property after the floods of 2010

COE

Kentucky

Land

Tract 241–B
Property Number: 31199011624
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 215–B
Property Number: 31199011626
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045
Location: 5 miles southwest of Kuttawa
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract N–819
Property Number: 31199140009
Dale Hollow Lake Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601
Status: Underutilized
Reason: landholding agency needs property after the floods of 2010

Tract 2107
Property Number: 31199010932
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tracts 2601, 2602, 2603, 2604
Property Number: 31199010933
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562
Status: Unutilized
Reason: landholding agency needs property after the floods of 2010

Tract 7206
Property Number: 31199010936
Barkley Lake
Dover Co: Stewart TN 37058
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tracts 8813, 8814
Property Number: 31199010937
Barkley Lake
Cumberland Co: Stewart TN 37050
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 8911
Property Number: 31199010938
Barkley Lake
Cumberland City Co: Montgomery TN 37050
Status: Excess
Reason: landholding agency needs property after the floods of 2010

COE

Tennessee

Land

Tract 1911
Property Number: 31199010934
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Location: East of Lamar Road
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 6949
Property Number: 31199010944
Barkley Lake
Dover Co: Stewart TN 37058
Location: 1½ miles SE of Dover, TN.
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 11503
Property Number: 31199010939
Barkley Lake
Ashland City Co: Cheatham TN 37015
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tracts 11523, 11524
Property Number: 31199010940
Barkley Lake
Ashland City Co: Cheatham TN 37015
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 6410
Property Number: 31199010941
Barkley Lake
Bumpus Mills Co: Stewart TN 37028
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tract 9707
Property Number: 31199010943
Barkley Lake
Palmyer Co: Montgomery TN 37142
Status: Excess
Reason: landholding agency needs property after the floods of 2010

Tracts 6005 and 6017
Property Number: 31199011173
Barkley Lake
Dover Co: Stewart TN 37058
Status: Excess
Reason: landholding agency needs property after the floods of 2010

COE

Tennessee

Land

Tract A–102
Property Number: 31199140006
Dale Hollow Lake Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551
Status: Underutilized
Reason: landholding agency needs property after the floods of 2010

Tract A–120
Property Number: 31199140007
Dale Hollow Lake Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551
Status: Underutilized
Reason: landholding agency needs property after the floods of 2010

Tract D–185
Property Number: 31199140010
Dale Hollow Lake Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570
Status: Underutilized
Reason: landholding agency needs property after the floods of 2010

GSA

Arizona

Building

Wilcox Patrol Station
Property Number: 54201110004

200 W. Downew Street
Wilcox Co: Cochise AZ 85643–2742
Status: Surplus
GSA Number: 9–X–AZ–0860
Reason: Expression of interest received

Land

Land
Property Number: 54201010014
95th Ave/Bethany Home Rd
Glendale AZ 85306
Status: Surplus
GSA Number: 9–AZ–852
Reason: Expression of interest received

0.30 acre
Property Number: 54201030010
Bethany Home Road
Glendale AZ 85306
Status: Excess
GSA Number: 9–I–AZ–0859
Reason: Expression of interest received

GSA

California

Building

Defense Fuel Support Pt.
Property Number: 54200810001
Estero Bay Facility
Morro Bay CA 93442
Status: Surplus
GSA Number: 9–N–CA–1606
Reason: Advertised for sale

Former SSA Bldg.
Property Number: 54201020002
1230 12th Street
Modesto CA 95354
Status: Surplus
GSA Number: 9–G–CA–1610
Reason: Advertised for sale

Land

Parcel F–2 Right of Way
Property Number: 54201030012
Seal Beach CA 90740
Status: Surplus
GSA Number: 9–N–CA–1508–AI
Reason: Expression of interest received

Drill Site #3A
Property Number: 54201040004
Ford City CA 93268
Status: Surplus
GSA Number: 9–B–CA–1673–AG
Reason: Expression of interest received

Drill Site #4
Property Number: 54201040005
Ford City CA 93268
Status: Surplus
GSA Number: 9–B–CA–1673–AB
Reason: Expression of interest received

GSA

California

Land

Drill Site #6
Property Number: 54201040006
Ford City CA 93268
Status: Surplus
GSA Number: 9–B–CA–1673–AC
Reason: Expression of interest received

Drill Site #9
Property Number: 54201040007
Ford City CA 93268
Status: Surplus
GSA Number: 9–B–CA–1673–AH
Reason: Expression of interest received

Drill Site #20
Property Number: 54201040008
Ford City CA 93268
Status: Surplus
GSA Number: 9–B–CA–1673–AD
Reason: Expression of interest received

Drill Site #22
Property Number: 54201040009
Ford City CA 93268
Status: Surplus
GSA Number: 9–B–CA–1673–AF
Reason: Expression of interest received

Drill Site #24
Property Number: 54201040010
Ford City CA 93268
Status: Surplus
GSA Number: 9–B–CA–1673–AE
Reason: Expression of interest received

Drill Site #26
Property Number: 54201040011
Ford City CA 93268
Status: Surplus
GSA Number: 9–B–CA–1673–AA
Reason: Expression of interest received

Colorado

Land

Common Pt. Shooting Rng.
Property Number: 54201120003
Bureau of Reclamation
Drake Co: Larimer CO 80515
Status: Excess
GSA Number: 7–1–CO–0678
Reason: expression of interest

Georgia

Building

Fed. Bldg. Post Office/Court
Property Number: 54201110006
404 N. Broad St.
Thomasville GA 31792
Status: Surplus
GSA Number: 4–G–GA–878AA
Reason: Conveyance Pending

GSA

Idaho

Building

Moscow Federal Bldg.
Property Number: 54201140003
220 East 5th Street
Moscow ID 83843
Status: Surplus
GSA Number: 9–G–ID–573
Reason: property will be occupied for 2 yrs.

Illinois

Building

1LT A.J. Ellison
Property Number: 54201110012
Army Reserve
Wood River IL 62095
Status: Excess
GSA Number: 1–D–II–738
Reason: Expression of Interest Received.

Iowa

Building

U.S. Army Reserve
Property Number: 54200920017
620 West 5th St.
Garner IA 50438
Status: Excess
GSA Number: 7–D–IA–0510
Reason: Advertised for sale

GSA

Louisiana

Land

Almonaster
Property Number: 54201110014
4300 Almonaster Ave.
New Orleans LA 70126
Status: Surplus
GSA Number: 7–D–LA–0576
Reason: Expression of Interest

Maryland

Building

Appraisers Store
Property Number: 54201030016
Baltimore MD 21202
Status: Excess
GSA Number: 4–G–MD–0623
Reason: Expression of interest received

Massachusetts

Land

FAA Site
Property Number: 54200830026
Massasoit Bridge Rd.
Nantucket MA 02554
Status: Surplus
GSA Number: MA–0895
Reason: Expressions of interest received

GSA

Michigan

Building

CPT George S. Crabbe USARC
Property Number: 54201030018
2901 Webber Street
Saginaw MI
Status: Excess
GSA Number: 1–D–MI–835
Reason: Advertised for sale

Minnesota

Building

FAA Outer Marker
Property Number: 54201120010
9935 Newton Ave.
Minneapolis MN 55431
Status: Excess
GSA Number: 1–I–MN–594
Reason: Advertised for sale

Bldg. 921
Property Number: 54201120017
W. Main St.
Paynesville MN
Status: Excess
GSA Number: 1–D–MN–0591
Reason: Expression of Interest

Missouri

Building

Federal Bldg/Courthouse
Property Number: 54200840013
339 Broadway St.
Cape Girardeau MO 63701
Status: Excess
GSA Number: 7–G–MO–0673
Reason: Advertised for sale

Kirksville Property
Property Number: 54201120016
FAA

Kirksville MO
Status: Surplus
GSA Number: 7–U–MO–0690
Reason: Advertised for sale

Montana

Building

Swan Lake Guard Station
Property Number: 54201130004
MP69 HWY 83 South
Swan Lake MT 55911
Status: Surplus
GSA Number: 7–A–MT–0514–2
Reason: Sale pending

Rising Sun Boat
Property Number: 54201130005
St. Mary Lake Glacier Nat'l Park
St. Mary Lake MT 59911
Status: Surplus
GSA Number: 7–I–MT–0544–3
Reason: Sale pending

GSA

Montana

Building

Kalispell Shop
Property Number: 54201130006
1899 Airport Rd.
Kalispell MT 59901
Status: Surplus
GSA Number: 7–A–MT–0632
Reason: Sale pending

Boulder Admin. Site
Property Number: 54201130016
12 Depot Hill Rd.
Boulder MT 59632
Status: Excess
GSA Number: 7–A–MT–532–AA
Reason: Expression of interest

New Hampshire

Building

Federal Building
Property Number: 54200920006
719 Main St.
Parcel ID: 424–124–78
Laconia NH 03246
Status: Excess
GSA Number: 1–G–NH–0503
Reason: Conveyance pending

GSA

New Jersey

Building

Camp Petricktown Sup. Facility
Property Number: 54200740005
US Route 130
Pedricktown NJ 08067
Status: Excess
GSA Number: 1–D–NJ–0662
Reason: Conveyance pending

Ohio

Building

Oxford USAR Facility
Property Number: 54201010007
6557 Todd Road
Oxford OH 45056
Status: Excess
GSA Number: 1–D–OH–833
Reason: Expression of interest received

Belmont Cty Memorial USAR Ctr
Property Number: 54201020008
5305 Guernsey St.
Bellaire OH 43906
Status: Excess
GSA Number: 1–D–OH–837
Reason: Expression of interest received

Army Reserve Center
Property Number: 54201020009
5301 Hauserman Rd.
Parma Co: Cuyahoga OH 44130
Status: Excess
GSA Number: I–D–OH–842
Reason: Advertised for sale

GSA

Ohio

Building

LTC Dwite Schaffner
Property Number: 54201120006
U.S. Army Reserve Center
1011 Gorge Blvd.
Akron Co: Summit OH 44310
Status: Excess
GSA Number: 1–D–OH–836
Reason: Expression of Interest

Oregon

Building

3 Bldgs/Land
Property Number: 54200840003
OTHR–B Radar
Cty Rd 514
Christmas Valley OR 97641
Status: Excess
GSA Number: 9–D–OR–0768
Reason: Expression of Interest

US Customs House
Property Number: 54200840004
220 NW. 8th Ave.
Portland OR
Status: Excess
GSA Number: 9–D–OR–0733
Reason: Conveyance pending

GSA

Pennsylvania

Land

Approx. 16.88
Property Number: 54200820011
271 Sterrettania Rd.
Erie PA 16506
Status: Surplus
GSA Number: 4–D–PA–0810
Reason: Sale in progress

South Carolina

Building

Naval Health Clinic
Property Number: 54201040013
3600 Rivers Ave.
Charleston SC 29405
Status: Excess
GSA Number: 4–N–SC–0606
Reason: Expression of interest received

Tennessee

Building

NOAA Admin. Bldg.
Property Number: 54200920015
456 S. Illinois Ave.
Oak Ridge TN 38730
Status: Excess
GSA Number: 4–B–TN–0664–AA
Reason: Expression of interest received

GSA

Texas

Building

FAA RML Facility
Property Number: 54201110016
11262 N. Houston Rosslyn Rd.
Houston TX 77086
Status: Surplus
GSA Number: 7–U–TX–1129
Reason: Expression of Interest

Rattle Snake Scoring Ste.
Property Number: 54201120005
1085 County Rd. 332
Pecos Co: Reeves TX 79772
Status: Excess
GSA Number: 7–D–TX–0604–AM
Reason: Advertised for sale

Land

FAA Outermarker—Houston
Property Number: 54201040001
Spring TX 77373
Status: Surplus
GSA Number: 7–U–TX–1110
Reason: Advertised for sale

FAA
Property Number: 54201120015
Directional Finder
Lampasas TX
Status: Excess
GSA Number: 7–U–TX–1131
Reason: Expression of Interest

Parcel 2
Property Number: 54201130001
Camp Bowie
Brownwood TX 76801
Status: Surplus
GSA Number: 7–D–TX–0589
Reason: Expression of Interest

GSA

Virginia

Building

Hampton Rds, Shore Patrol Bldg
Property Number: 54201120009
811 East City Hall Ave
Norfolk VA 23510
Status: Excess
GSA Number: 4–N–VA–758
Reason: Expression of Interest

Washington

Building

Fox Island Naval Lab Property Number: 54201020012
630 3rd Ave.
Fox Island Co: Pierce WA 98333
Status: Surplus
GSA Number: 9–D–WA–1245
Reason: Conveyance pending

Interior

Virginia

Building

Tract 05–151, Qtrs. 11
Property Number: 61201040001
National Park Service
Spotsylvania VA 22553
Status: Excess
Reason: Transferred to GSA for sale

Washington

2 Bldgs.
Property Number: 61201130003
Bureau of Reclamation
Sunnyside WA
Location:
Storehouse and Lumber Shed
Status: Excess
Reason: Pending disposal

Navy

Hawaii

Land

Property Record 1–11032
Property Number: 77201040011
Naval Station
Pearl Harbor HI 96818
Status: Unutilized
Reason: leased

VA

Iowa

Land

38 acres
Property Number: 97199740001
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138
Status: Unutilized
Reason: Enhanced-Use Legislation potential

Michigan

Land

VA Medical Center
Property Number: 97199010015
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016
Status: Underutilized
Reason: Being used for patient and program activities.

Montana

Building

VA MT Healthcare
Property Number: 97200030001
210 S. Winchester
Miles City Co: Custer MT 59301
Status: Underutilized
Reason: transfer to Custer County

VA

New York

Building

Bldg. 3
Property Number: 97200520001
VA Medical Center
Batavia Co: Genesee NY 14020
Status: Underutilized
Reason: The VA Medical Ctr. is currently fully utilizing the space.

Ohio

Building

Bldg. 116
Property Number: 97199920002
VA Medical Center
Dayton Co: Montgomery OH 45428
Status: Unutilized
Reason: preexisting agreement

Pennsylvania

Land

VA Medical Center
Property Number: 97199010016
New Castle Road
Butler Co: Butler PA 16001
Status: Underutilized
Reason: Used as natural drainage for facility property.

Land No. 645
Property Number: 97199010080
VA Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206
Status: Unutilized
Reason: Property is essential to security and safety of patients.

VA

Pennsylvania

Land

Land—34.16 acres
Property Number: 97199340001
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320
Status: Underutilized
Reason: needed for mission related functions

Texas

Land

Land
Property Number: 97199010079
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504
Status: Underutilized
Reason: Closed land fill site w/cap/risk of ground water

[FR Doc. 2012–2721 Filed 2–9–12; 8:45 am]

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Part III

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Distribution Transformers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2010–BT–STD–0048]

RIN 1904–AC04

Energy Conservation Program: Energy Conservation Standards for Distribution Transformers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including low-voltage dry-type distribution transformers, and directs the U.S. Department of Energy (DOE) to prescribe standards for various other products and equipment, including other types of distribution transformers. EPCA also requires DOE to determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this notice, DOE proposes amended energy conservation standards for distribution transformers. The notice also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES: DOE will hold a public meeting on February 23, 2012, from 9 a.m. to 1 p.m., in Washington, DC. The meeting will also be broadcast as a Webinar. See section VII 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 10, 2012. See section VII Public Participation for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 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. Edwards to initiate the necessary procedures. In addition, persons can attend the public meeting via Webinar. For more information, refer to the Public Participation section near the end of this notice.

Any comments submitted must identify the NOPR for Energy Conservation Standards for Distribution Transformers, and provide docket number EERE–2010–BT–STD–0048 and/or regulation identifier number (RIN) number 1904–AC04. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.

2. *Email: DistributionTransformers-2010-STD-0048@ee.doe.gov*. Include the docket number and/or RIN 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, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov*.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov*, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;rpp=10;po=0;D=EERE-2010-BT-STD-0048*.

FOR FURTHER INFORMATION CONTACT: James Raba, 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) 586–8654. Email: *Jim.Raba@ee.doe.gov*.

Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–5709. Email: *Ami.Grace-Tardy@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of the Proposed Rule
A. Benefits and Costs to Consumers
B. Impact on Manufacturers
C. National Benefits
II. Introduction
A. Authority
B. Background
1. Current Standards
2. History of Standards Rulemaking for Distribution Transformers
III. General Discussion
A. Test Procedures
1. General
2. Multiple kVA Ratings
3. Dual/Multiple-Voltage Basic Impulse Level
4. Dual/Multiple-Voltage Primary Windings
5. Dual/Multiple-Voltage Secondary Windings
6. Loading
B. Technological Feasibility
1. General
2. Maximum Technologically Feasible Levels
C. Energy Savings
1. Determination of Savings
2. Significance of Savings
D. Economic Justification
1. Specific Criteria
a. Economic Impact on Manufacturers and Consumers
b. Life-Cycle Costs
c. Energy Savings
d. Lessening of Utility or Performance of Products
e. Impact of Any Lessening of Competition
f. Need for National Energy Conservation
g. Other Factors
2. Rebuttable Presumption
IV. Methodology and Discussion of Related Comments
A. Market and Technology Assessment
1. Scope of Coverage
a. Definitions
b. Underground Mining Transformer Coverage
c. Low-Voltage Dry-Type Distribution Transformers
d. Negotiating Committee Discussion of Scope
2. Equipment Classes
a. Less-Flammable Liquid-Immersed Transformers
b. Pole- and Pad-Mounted Liquid-Immersed Distribution Transformers
c. BIL Ratings in Liquid-Immersed Distribution Transformers
3. Technology Options
a. Core Deactivation

b. Symmetric Core
c. Intellectual Property
B. Screening Analysis
1. Nanotechnology Composites
C. Engineering Analysis
1. Engineering Analysis Methodology
2. Representative Units
3. Design Option Combinations
4. A and B Loss Value Inputs
5. Materials Prices
6. Markups
a. Factory Overhead
b. Labor Costs
c. Shipping Costs
7. Baseline Efficiency and Efficiency Levels
8. Scaling Methodology
9. Material Availability
10. Primary Voltage Sensitivities
11. Impedance
12. Size and Weight
D. Markups Analysis
E. Energy Use Analysis
F. Life-Cycle Cost and Payback Period Analysis
1. Modeling Transformer Purchase Decision
2. Inputs Affecting Installed Cost
a. Equipment Costs
b. Installation Costs
3. Inputs Affecting Operating Costs
a. Transformer Loading
b. Load Growth Trends
c. Electricity Costs
d. Electricity Price Trends
e. Standards Compliance Date
f. Discount Rates
g. Lifetime
h. Base Case Efficiency
G. National Impact Analysis—National Energy Savings and Net Present Value Analysis
1. Shipments
2. Efficiency Trends
3. Equipment Price Forecast
4. Discount Rate
5. Energy Used in Manufacturing Transformers
H. Customer Subgroup Analysis
I. Manufacturer Impact Analysis
1. Overview
2. Government Regulatory Impact Model
3. GRIM Key Inputs
a. Manufacturer Production Costs
b. Base-Case Shipments Forecast
c. Product and Capital Conversion Costs
d. Standards Case Shipments
e. Markup Scenarios
4. Discussion of Comments
a. Material Availability
b. Symmetric Core Technology
c. Patents Related to Amorphous Steel Production
5. Manufacturer Interviews
a. Conversion Costs and Stranded Assets
b. Shortage of Materials
c. Compliance
d. Effective Date
e. Emergency Situations
J. Employment Impact Analysis
K. Utility Impact Analysis
L. Emissions Analysis
M. Monetizing Carbon Dioxide and Other Emissions Impacts
1. Social Cost of Carbon
a. Monetizing Carbon Dioxide Emissions
b. Social Cost of Carbon Values Used in Past Regulatory Analyses
c. Current Approach and Key Assumptions
2. Valuation of Other Emissions Reductions
N. Discussion of Other Comments
1. Trial Standard Levels
2. Proposed Standards
3. Alternative Methods
4. Labeling
5. Imported Units
V. Analytical Results and Conclusions
A. Trial Standard Levels
B. Economic Justification and Energy Savings
1. Economic Impacts on Customers
a. Life-Cycle Cost and Payback Period
b. Customer Subgroup Analysis
c. Rebuttable-Presumption Payback
2. Economic Impact on Manufacturers
a. Industry Cash-Flow Analysis Results
b. Impacts on Employment
c. Impacts on Manufacturing Capacity
d. Impacts on Subgroups of Manufacturers
e. Cumulative Regulatory Burden
3. National Impact Analysis
a. Significance of Energy Savings
b. Net Present Value of Customer Costs and Benefits
c. Indirect Impacts on Employment
4. Impact on Utility or Performance of Equipment
5. Impact of Any Lessening of Competition
6. Need of the Nation to Conserve Energy
7. Summary of National Economic Impacts
8. Other Factors
C. Proposed Standards
1. Benefits and Burdens of Trial Standard Levels Considered for Liquid-Immersed Distribution Transformers
2. Benefits and Burdens of Trial Standard Levels Considered for Low-Voltage, Dry-Type Distribution Transformers
3. Benefits and Burdens of Trial Standard Levels Considered for Medium-Voltage, Dry-Type Distribution Transformers
4. Summary of Benefits and Costs (Annualized) of the Proposed Standards
VI. Procedural Issues and Regulatory Review
A. Review Under Executive Orders 12866 and 13563
B. Review Under the Regulatory Flexibility Act
1. Description and Estimated Number of Small Entities Regulated
a. Methodology for Estimating the Number of Small Entities
b. Manufacturer Participation
c. Distribution Transformer Industry Structure and Nature of Competition
d. Comparison Between Large and Small Entities
2. Description and Estimate of Compliance Requirements
a. Summary of Compliance Impacts
3. Duplication, Overlap, and Conflict With Other Rules and Regulations
4. Significant Alternatives to the Proposed Rule
5. Significant Issues Raised by Public Comments
6. Steps DOE Has Taken To Minimize the Economic Impact on Small Manufacturers
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Review Under the Information Quality Bulletin for Peer Review
VII. Public Participation
A. Attendance at the Public Meeting
B. Procedure for Submitting Prepared General Statements for Distribution
C. Conduct of the Public Meeting
D. Submission of Comments
E. Issues on Which DOE Seeks Comment
VIII. Approval of the Office of the Secretary

I. Summary of the Proposed Rule

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for ''Consumer Products Other Than Automobiles.'' Part C of Title III of EPCA (42 U.S.C. 6311–6317) established a similar program for ''Certain Industrial Equipment,'' including distribution transformers.[1] Pursuant to EPCA, any new or amended energy conservation standard that the Department of Energy (DOE) prescribes for certain equipment, such as distribution transformers, shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a)). Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B) and 6316(a)). In accordance with these and other statutory provisions discussed in this notice, DOE proposes amended energy conservation standards for distribution transformers. The proposed standards are summarized in the following tables: Table I.1, through Table I.3 that describe the covered equipment classes and proposed trial standard levels (TSLs), Table I.4 that shows the mapping of TSL to energy efficiency levels (ELs),[2] and Table I.5 through Table I.8 which show the proposed standard in terms of minimum electrical efficiency. These proposed standards, if adopted, would apply to all covered distribution transformers listed in the tables and manufactured in, or imported into, the

[1] For editorial reasons, upon codification in the U.S. Code, Parts B and C were redesignated as Parts A and A–1, respectively.

[2] A detailed description of the mapping of trial standard level to energy efficiency levels can be found in the Technical Support Document, chapter 10 section 10.2.2.3 pg 10–10.

United States on or after January 1, 2016. As discussed in section IV.C.8 of this notice, any distribution transformer with a kVA rating falling between the kVA ratings shown in the tables shall meet a minimum energy efficiency level calculated by a linear interpolation of the minimum efficiency requirements of the kVA ratings immediately above and below that rating.[3]

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS (COMPLIANCE STARTING JANUARY 1, 2016)

Equipment class	Design line	Type	Phase count	BIL	Proposed TSL
1	1, 2 and 3	Liquid-immersed	1	Any	1
2	4 and 5	Liquid-immersed	3	Any	1

Note: BIL means "basic impulse insulation level."

TABLE I.2—PROPOSED ENERGY CONSERVATION STANDARDS FOR LOW-VOLTAGE, DRY-TYPE DISTRIBUTION TRANSFORMERS (COMPLIANCE STARTING JANUARY 1, 2016)

Equipment class	Design line	Type	Phase count	BIL	Proposed TSL
3	6	Low-voltage, dry-type	1	≤10 kV	1
4	7 and 8	Low-voltage, dry-type	3	≤10 kV	1

Note: BIL means "basic impulse insulation level."

TABLE I.3—PROPOSED ENERGY CONSERVATION STANDARDS FOR MEDIUM-VOLTAGE, DRY-TYPE DISTRIBUTION TRANSFORMERS (COMPLIANCE STARTING JANUARY 1, 2016)

Equipment class	Design line	Type	Phase count	BIL	Proposed TSL
5	9 and 10	Medium-voltage, dry-type	1	25–45 kV	2
6	9 and 10	Medium-voltage, dry-type	3	25–45 kV	2
7	11 and 12	Medium-voltage, dry-type	1	46–95 kV	2
8	11 and 12	Medium-voltage, dry-type	3	46–95 kV	2
9	13A and 13B	Medium-voltage, dry-type	1	≥96 kV	2
10	13A and 13B	Medium-voltage, dry-type	3	≥96 kV	2

Note: BIL means "basic impulse insulation level," and measures how resistant a transformer's insulation is to large voltage transients.

TABLE I.4—TRIAL STANDARD LEVEL TO ENERGY EFFICIENCY LEVEL MAPPING FOR PROPOSED ENERGY CONSERVATION STANDARD

Type	Design line	Phase count	Proposed TSL	Energy efficiency level
Liquid-immersed	1	1	1	1
	2	1		Base
	3	1		1
	4	3		1
	5	3		1
Low-voltage, dry-type	6	1	1	Base
	7	3		2
	8	3		2
Medium-voltage, dry-type	9	3	2	1
	10	3		2
	11	3		1
	12	3		2
	13A	3		1
	13B	3		2

[3] kVA is an abbreviation for kilovolt-ampere, which is a capacity metric used by industry to classify transformers. A transformer's kVA rating represents its output power when it is fully loaded (*i.e.,* 100 percent).

TABLE I.5—PROPOSED ELECTRICAL EFFICIENCIES FOR ALL LIQUID-IMMERSED DISTRIBUTION TRANSFORMER EQUIPMENT CLASSES (COMPLIANCE STARTING JANUARY 1, 2016)

Standards by kVA and equipment class			
Equipment class 1		Equipment class 2	
kVA	%	kVA	%
10	98.70	15	98.65
15	98.82	30	98.83
25	98.95	45	98.92
37.5	99.05	75	99.03
50	99.11	112.5	99.11
75	99.19	150	99.16
100	99.25	225	99.23
167	99.33	300	99.27
250	99.39	500	99.35
333	99.43	750	99.40
500	99.49	1000	99.43
		1500	99.48

TABLE I.6—PROPOSED ELECTRICAL EFFICIENCIES FOR ALL LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMER EQUIPMENT CLASSES (COMPLIANCE STARTING JANUARY 1, 2016)

Standards by kVA and equipment class			
Equipment class 3		Equipment class 4	
kVA	%	kVA	%
15	97.73	15	97.44
25	98.00	30	97.95
37.5	98.20	45	98.20
50	98.31	75	98.47
75	98.50	112.5	98.66
100	98.60	150	98.78
167	98.75	225	98.92
250	98.87	300	99.02
333	98.94	500	99.17
		750	99.27
		1000	99.34

TABLE I.7—PROPOSED ELECTRICAL EFFICIENCIES FOR ALL MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMER EQUIPMENT CLASSES (COMPLIANCE STARTING JANUARY 1, 2016)

Standards by kVA and equipment class											
Equipment class 5		Equipment class 6		Equipment class 7		Equipment class 8		Equipment class 9		Equipment class 10	
kVA	%	kVA	%	kVA	%	kVA	%	kVA	%	kVA	%
15	98.10	15	97.50	15	97.86	15	97.18				
25	98.33	30	97.90	25	98.12	30	97.63				
37.5	98.49	45	98.10	37.5	98.30	45	97.86				
50	98.60	75	98.33	50	98.42	75	98.13				
75	98.73	112.5	98.52	75	98.57	112.5	98.36	75	98.53		
100	98.82	150	98.65	100	98.67	150	98.51	100	98.63		
167	98.96	225	98.82	167	98.83	225	98.69	167	98.80	225	98.57
250	99.07	300	98.93	250	98.95	300	98.81	250	98.91	300	98.69
333	99.14	500	99.09	333	99.03	500	98.99	333	98.99	500	98.89
500	99.22	750	99.21	500	99.12	750	99.12	500	99.09	750	99.02
667	99.27	1000	99.28	667	99.18	1000	99.20	667	99.15	1000	99.11
833	99.31	1500	99.37	833	99.23	1500	99.30	833	99.20	1500	99.21
		2000	99.43			2000	99.36			2000	99.28
		2500	99.47			2500	99.41			2500	99.33

A. Benefits and Costs to Consumers [4]

Table I.8 presents DOE's evaluation of the economic impacts of the proposed standards on customers of distribution transformers, as measured by the average life-cycle cost (LCC) savings and the median payback period (PBP). DOE measures the impacts of standards relative to a base case that reflects likely trends in the distribution transformer market in the absence of amended standards. The base case predominantly consists of products at the baseline efficiency levels evaluated for each representative unit, which correspond to the existing energy conservation standard level of efficiency for distribution transformers established either in DOE's 2007 rulemaking or by EPACT 2005. The average LCC savings are positive for all but two of the design lines, for which customers are not impacted by the proposed standards. (Throughout this document, ''distribution transformers'' are also referred to as simply ''transformers.'')

TABLE I.8—IMPACTS OF PROPOSED STANDARDS ON CUSTOMERS OF DISTRIBUTION TRANSFORMERS

Design Line	Average LCC savings (2010$)	Median payback period (years)
Liquid-Immersed		
1	36	20.2
2	* N/A	* N/A
3	2,413	6.3
4	862	5.0
5	7,787	4.0
Low-Voltage, Dry-Type		
6	* N/A	* N/A
7	1,714	4.5
8	2,476	8.4
Medium-Voltage, Dry-Type		
9	849	2.6
10	4,791	8.8
11	1,043	10.7
12	6,934	9.0
13A	25	16.5
13B	4,709	12.5

* No consumers are impacted by the proposed standard because no change from the minimum efficiency standard is proposed for design lines 2 and 6.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2011 through 2045). Using a real discount rate of 7.4 percent for liquid-immersed distribution transformers, 9 percent for medium-voltage dry-type distribution transformers, and 11.1 percent for low-voltage dry- type distribution transformers, DOE estimates that the industry net present value (INPV) for manufacturers of liquid-immersed, medium-voltage dry-type and low-voltage dry-type distribution transformers is $625 million, $91 million, and $220 million, respectively, in 2011$. Under the proposed standards, DOE expects that liquid-immersed manufacturers may lose up to 6.3 percent of their INPV, which is approximately $39.6 million; medium-voltage manufacturers may lose up to 7.1 percent of their INPV, which is approximately $6.5 million; and low-voltage dry-type manufacturers may lose up to 7.7 percent of their INPV, which is approximately $16.8 million. Additionally, based on DOE's interviews with the manufacturers of distribution transformers, DOE does not expect any plant closings or significant loss of employment.

C. National Benefits

DOE's analyses indicate that the proposed standards would save a significant amount of energy—an estimated 1.58 quads over 30 years (2016–2045). In addition, DOE expects the energy savings from the proposed standards to be equivalent to the energy output from 2.40 gigawatts (GW) of generating capacity by 2045.

The cumulative national net present value (NPV) of total consumer costs and savings of the proposed standards for distribution transformers sold in 2016–2045, in 2010$, ranges from $2.9 billion (at a 7-percent discount rate) to $12.2 billion (at a 3-percent discount rate) over 30 years (2016–2045). This NPV expresses the estimated total value of future operating cost savings minus the estimated increased equipment costs for distribution transformers purchased in 2016–2045, discounted to 2010.

In addition, the proposed standards would have significant environmental benefits. The energy savings are expected to result in cumulative greenhouse gas emission reductions of 122.1 million metric tons (Mt) [5] of carbon dioxide (CO_2) from 2016–2045. During this period, the proposed standards are expected to result in emissions reductions of 99.7 thousand tons of nitrogen oxides (NO_X) and 0.819 tons of mercury (Hg).[6]

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent interagency process. The derivation of the SCC values is discussed in section IV.M. DOE estimates the net present monetary value of the CO_2 emissions reduction is between $0.71 and $12.5 billion, expressed in 2010$ and discounted to 2010. DOE also estimates the net present monetary value of the NO_X emissions reduction, expressed in 2010$ and discounted to 2010, is between $0.069 billion at a 7-percent discount rate and $0.210 billion at a 3-percent discount rate.[7]

Table I.9 summarizes the national economic costs and benefits expected to result from today's proposed standards for distribution transformers.

[4] For the purposes of this document, the ''consumers'' of distribution transformers are referred to as ''customers.'' Customers refer to electric utilities in the case of liquid-immersed transformers, and to utilities and building owners in the case of dry-type transformers.

[5] A metric ton is equivalent to 1.1 short tons. A short ton is equal to 2,000 pounds. Results for NO_X and Hg are presented in short tons (referred to here as simply ''tons.'')

[6] DOE calculates emissions reductions relative to the most recent version of the Annual Energy Outlook (AEO) Reference case forecast. This forecast accounts for emissions reductions from in-place regulations, including the Clean Air Interstate Rule (CAIR, 70 FR 25162 (May 12, 2005)), but not the Clean Air Mercury Rule (CAMR, 70 FR 28606 (May 18, 2005)). Subsequent regulations, including the Cross-State Air Pollution rule issued on July 6, 2011, do not appear in the AEO forecast at this time.

[7] DOE is aware of multiple agency efforts to determine the appropriate range of values used in evaluating the potential economic benefits of reduced Hg emissions. DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it once again monetizes Hg in its rulemakings.

TABLE I.9—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED DISTRIBUTION TRANSFORMER ENERGY CONSERVATION STANDARDS

Category	Present value *billion 2010$*	Discount rate (percent)
Benefits:		
Operating Cost Savings	5.58	7
	17.44	3
CO_2 Reduction Monetized Value (at $4.9/t) *	0.71	5
CO_2 Reduction Monetized Value (at $22.3/t) *	4.13	3
CO_2 Reduction Monetized Value (at $36.5/t) *	7.20	2.5
CO_2 Reduction Monetized Value (at $67.6/t) *	12.54	3
NO_X Reduction Monetized Value (at $2,537/ton) *	0.069	7
	0.210	3
Total Benefits**	9.78	7
	21.7	3
Costs:		
Incremental Installed Costs	2.67	7
	5.21	3
Net Benefits:		
Including CO_2 and NO_X	7.10	7
	16.5	3

* The CO_2 values represent global monetized values of the SCC in 2010 under several scenarios. The values of $4.9, $22.1, and $36.3 per metric ton (t) are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $67.1/t represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. A metric ton is equivalent to 1.1 short tons. A short ton is equal to 2,000 pounds. Results for NO_X are presented in short tons (referred to here as simply "tons.")

** Total Benefits for both the 3% and 7% cases are derived using the SCC value calculated at a 3% discount rate, and the average of the low and high NO_X values used in DOE's analysis.

The benefits and costs of today's proposed standards, for equipment sold in 2016–2045, can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) The annualized national economic value of the benefits from consumer operation of equipment that meets the proposed standards (consisting primarily of operating cost savings from using less energy minus increases in equipment purchase and installation costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[8]

Although combining the values of operating savings and CO_2 emission reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of distribution transformers shipped in 2016–2045. The SCC values, on the other hand, reflect the present value of some future climate-related impacts resulting from the emission of one metric ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Estimates of annualized benefits and costs of today's proposed standards are shown in Table I.10. (All monetary values below are expressed in 2010$.) The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $22.3/metric ton in 2010, the cost of the standards proposed in today's proposed standards is $302 million per year in increased equipment costs. The benefits are $631 million per year in reduced equipment operating costs, $244 million in CO_2 reductions, and $7.78 million in reduced NO_X emissions. In this case, the net benefit amounts to $581 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $22.3/metric ton in 2010, the cost of the standards proposed in today's rule is $308 million per year in increased equipment costs. The benefits are $1,026 million per year in reduced operating costs, $244 million in CO_2 reductions, and $12.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $975 million per year.

TABLE I.10—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS FOR DISTRIBUTION TRANSFORMERS

	Discount rate	Monetized (million 2010$/year)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits:				

[8] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2011, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table I.9. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2011 that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined would be a steady stream of payments.

TABLE I.10—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS FOR DISTRIBUTION TRANSFORMERS—Continued

	Discount rate	Monetized (million 2010$/year)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Operating Cost Savings	7%	631	594	659.
	3%	1,026	950	1,075.
CO_2 Reduction at $4.9/t**	5%	58.6	58.6	58.6.
CO_2 Reduction at $22.3/t**	3%	244	244	244.
CO_2 Reduction at $36.5/t**	2.5%	389	389	389.
CO_2 Reduction at $67.6/t**	3%	742	742	742.
NO_X Reduction at $2,537/ton**	7%	7.78	7.78	7.78.
	3%	12.4	12.4	12.4.
Total †	7% plus CO_2 range	697 to 1380	660 to 1343	726 to 1409.
	7%	883	846	911.
	3% plus CO_2 range	1097 to 1780	1021 to 1704	1146 to 1829.
	3%	1,283	1,207	1,331.
Costs:				
Incremental Product Costs	7%	302	338	285.
	3%	308	351	289.
Total Net Benefits:				
Total †	7% plus CO_2 range	400 to 1083	327 to 1010	445 to 1128.
	7%	581	507	626.
	3% plus CO_2 range	789 to 1472	670 to 1353	857 to 1540.
	3%	975	855	1,043.

* The Primary, Low Net Benefits, and High Net Benefits Estimates utilize forecasts of energy prices from the *AEO 2011* reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect no change in the Primary estimate, rising product prices in the Low Net Benefits estimate, and declining product prices in the High Net Benefits estimate.

** The CO_2 values represent global values (in 2010$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.3, and $36.5 per metric ton are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $67.6 per metric ton represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The value for NOX (in 2010$) is the average of the low and high values used in DOE's analysis.

Total Benefits for both the 3% and 7% cases are derived using the SCC value calculated at a 3% discount rate, which is $22.3/metric ton in 2010 (in 2010$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that equipment achieving these proposed standard levels are already commercially available for at least some, if not most, equipment classes covered by today's proposal. Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more stringent energy efficiency levels as trial standard levels, and is still considering them in this rulemaking. However, DOE has tentatively concluded that, in some cases, the potential burdens of the more stringent energy efficiency levels would outweigh the projected benefits. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this notice that are either higher or lower than the proposed standards, or some combination of energy efficiency level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying today's proposal, as well as some of the relevant historical background related to the establishment of energy conservation standards for distribution transformers.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for "Consumer Products Other Than Automobiles." Part C of Title III of EPCA (42 U.S.C. 6311–6317) established a similar program for "Certain Industrial Equipment," including distribution transformers.[9] The Energy Policy Act of 1992 (EPACT 1992), Public Law 102–486, amended EPCA and directed the Department to prescribe energy conservation standards for distribution transformers. (42 U.S.C. 6317(a)) The Energy Policy Act of 2005 (EPACT 2005), Public Law 109–25, amended EPCA to establish energy conservation standards for low-voltage, dry-type distribution transformers.[10] (42 U.S.C. 6295(y)) Under 42 U.S.C. 6313(a)(6)(C)(i), DOE must review energy conservation standards for commercial and industrial equipment and amend the standards as needed no later than six years from the issuance of a final rule establishing or amending a standard for a covered product. A final rule establishing any amended standards based on such notice of

[9] For editorial reasons, upon codification in the U.S. Code, Parts B and C were redesignated as Parts A and A–1, respectively

[10] EPACT 2005 established that the efficiency of a low-voltage dry-type distribution transformer manufactured on or after January 1, 2007 shall be the Class I Efficiency Levels for distribution transformers specified in Table 4–2 of the "Guide for Determining Energy Efficiency for Distribution Transformers" published by the National Electrical Manufacturers Association (NEMA TP 1–2002).

proposed rulemaking (NOPR) must be completed within two years of publication of the NOPR. (42 U.S.C. 6313(a)(6)(C)(iii)(I)).

DOE publishes today's proposed rule pursuant to Part C of Title III, which establishes an energy conservation program for covered equipment that consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) compliance certification and enforcement procedures. For those distribution transformers for which DOE determines that energy conservation standards are warranted, the DOE test procedures must be the ''Standard Test Method for Measuring the Energy Consumption of Distribution Transformers'' prescribed by the National Electrical Manufacturers Association (NEMA TP 2–1998), subject to review and revision by the Secretary in accordance with certain criteria and conditions. (42 U.S.C. 6293(b)(10), 6314(a)(2)–(3) and 6317(a)(1)) Manufacturers of covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those types of equipment. (42 U.S.C. 6314(d)) The DOE test procedures for distribution transformers currently appear at title 10 of the Code of Federal Regulations (CFR) part 431, subpart K, appendix A.

DOE must follow specific statutory criteria for prescribing amended standards for covered equipment. As indicated above, any amended standard for covered equipment must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a)) Furthermore, DOE may not adopt any amended standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3) and 6316(a)) Moreover, DOE may not prescribe a standard: (1) For certain equipment, including distribution transformers, if no test procedure has been established for the equipment, or (2) if DOE determines by rule that the proposed standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B) and 6316(a)) In deciding whether a proposed amended standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the equipment subject to the standard;

2. The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;

3. The total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

4. Any lessening of the utility or the performance of the covered equipment likely to result from the imposition of the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

6. The need for national energy and water conservation; and

7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1) and 6316(a)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4) and 6316(a))

Further, EPCA, as codified, establishes a rebuttable presumption that an energy conservation standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing equipment complying with the energy conservation standard will be less than three times the value of the energy savings a consumer will receive in the first year of using the equipment. (See 42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a))

Additionally, 42 U.S.C. 6295(q)(1), as applied to covered equipment via 42 U.S.C. 6316(a), specifies requirements when promulgating a standard for a type or class of covered equipment that has two or more subcategories. DOE must specify a different standard level than that which applies generally to such type or class of equipment for any group of covered equipment that has the same function or intended use if DOE determines that equipment within such group (A) consumes a different kind of energy from that consumed by other covered equipment within such type (or class); or (B) has a capacity or other performance-related feature which other equipment within such type (or class) does not have and such feature justifies a higher or lower standard. (42 U.S.C. 6294(q)(1) and 6316(a)) In determining whether a performance-related feature justifies a different standard for a group of equipment, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2) and 6316(a))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c) and 6316(a)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

DOE has also reviewed this regulation pursuant to Executive Order (EO) 13563, issued on January 18, 2011 (76 FR 3281, Jan. 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in EO 12866. To the extent permitted by law, agencies are required by EO 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify

performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that EO 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's notice of proposed rulemaking (NOPR) is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Background

1. Current Standards

On August 8, 2005, the Energy Policy Act of 2005 (EPACT 2005) amended EPCA to establish energy conservation standards for low-voltage, dry-type distribution transformers (LVDTs).[11] (EPACT 2005, Section 135(c); 42 U.S.C. 6295(y)) The standard levels for low-voltage dry-type distribution transformers appear in Table II.1.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR LOW-VOLTAGE, DRY-TYPE DISTRIBUTION TRANSFORMERS

Single-phase		Three-phase	
kVA	Efficiency (%)	kVA	Efficiency (%)
15	97.7	15	97.0
25	98.0	30	97.5
37.5	98.2	45	97.7
50	98.3	75	98.0
75	98.5	112.5	98.2
100	98.6	150	98.3
167	98.7	225	98.5
250	98.8	300	98.6
333	98.9	500	98.7
		750	98.8
		1000	98.9

Note: Efficiencies are determined at the following reference conditions: (1) for no-load losses, at the temperature of 20 °C, and (2) for load-losses, at the temperature of 75 °C and 35 percent of nameplate load.

DOE incorporated these standards into its regulations, along with the standards for several other types of products and equipment, in a final rule published on October 18, 2005. 70 FR 60407, 60416—60417. These standards appear at 10 CFR 431.196(a).

On October 12, 2007, DOE published a final rule that established energy conservation standard for liquid-immersed distribution transformers and medium-voltage dry-type distribution transformers, which are shown in Table II.2 and Table II.3, respectively. 72 FR 58190, 58239–40. These standards are codified at 10 CFR 431.196(b) and (c).

TABLE II.2—ENERGY CONSERVATION STANDARDS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS

Single-phase		Three-phase	
kVA	Efficiency (%)	kVA	Efficiency (%)
10	98.62	15	98.36
15	98.76	30	98.62
25	98.91	45	98.76
37.5	99.01	75	98.91
50	99.08	112.5	99.01
75	99.17	150	99.08
100	99.23	225	99.17
167	99.25	300	99.23
250	99.32	500	99.25
333	99.36	750	99.32
500	99.42	1000	99.36
667	99.46	1500	99.42
833	99.49	2000	99.46
		2500	99.49

Note: All efficiency values are at 50 percent of nameplate-rated load, determined according to the DOE Test-Procedure. 10 CFR part 431, subpart K, appendix A.

[11] EPACT 2005 established that the efficiency of a low-voltage dry-type distribution transformer manufactured on or after January 1, 2007 shall be the Class I Efficiency Levels for distribution transformers specified in Table 4–2 of the ''Guide for Determining Energy Efficiency for Distribution Transformers'' published by the National Electrical Manufacturers Association (NEMA TP 1–2002).

TABLE II.3—ENERGY CONSERVATION STANDARDS FOR MEDIUM-VOLTAGE, DRY-TYPE DISTRIBUTION TRANSFORMERS

Single-phase				Three-phase			
BIL	20–45 kV	46–95 kV	≥96 kV	BIL	20–45 kV	46–95 kV	≥96 kV
kVA	Efficiency (%)	Efficiency (%)	Efficiency (%)	kVA	Efficiency (%)	Efficiency (%)	Efficiency (%)
15	98.10	97.86	.....	15	97.50	97.18	.....
25	98.33	98.12	.....	30	97.90	97.63	.....
37.5	98.49	98.30	.....	45	98.10	97.86	.....
50	98.60	98.42	.....	75	98.33	98.12	.....
75	98.73	98.57	98.53	112.5	98.49	98.30	.....
100	98.82	98.67	98.63	150	98.60	98.42	.....
167	98.96	98.83	98.80	225	98.73	98.57	98.53
250	99.07	98.95	98.91	300	98.82	98.67	98.63
333	99.14	99.03	98.99	500	98.96	98.83	98.80
500	99.22	99.12	99.09	750	99.07	98.95	98.91
667	99.27	99.18	99.15	1000	99.14	99.03	98.99
833	99.31	99.23	99.20	1500	99.22	99.12	99.09
				2000	99.27	99.18	99.15
				2500	99.31	99.23	99.20

Note: BIL means "basic impulse insulation level."
Note: All efficiency values are at 50 percent of nameplate rated load, determined according to the DOE Test-Procedure. 10 CFR part 431, subpart K, appendix A.

2. History of Standards Rulemaking for Distribution Transformers

In a notice published on October 22, 1997 (62 FR 54809), DOE stated that it had determined that energy conservation standards were warranted for electric distribution transformers, relying in part on two reports by DOE's Oak Ridge National Laboratory (ORNL). These reports—*Determination Analysis of Energy Conservation Standards for Distribution Transformers,* ORNL–6847 (1996) and *Supplement to the "Determination Analysis,"* ORNL–6847 (1997)—are available on the DOE Web site at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/distribution_transformers.html.* In 2000, DOE issued its Framework Document for Distribution Transformer Energy Conservation Standards Rulemaking, describing its proposed approach for developing standards for distribution transformers, and held a public meeting to discuss the Framework Document. The document is available on the above-referenced DOE Web site. Stakeholders also submitted written comments on the document, addressing a range of issues.

Subsequently, DOE issued draft reports as to certain of the key analyses contemplated by the Framework Document.[12] It received comments from stakeholders on these draft reports and, on July 29, 2004, published an advance notice of proposed rulemaking (ANOPR) for distribution transformer standards. 69 FR 45376. DOE then held a webcast on material it had published relating to the ANOPR, followed by a public meeting on the ANOPR on September 28, 2004. In August 2005, DOE issued a draft of certain of the analyses on which it planned to base the standards for liquid-immersed and medium-voltage, dry-type distribution transformers, along with documents that supported the draft analyses.[13] DOE did this to enable stakeholders to review the analyses and make recommendations as to standard levels.

On April 27, 2006, DOE published its Final Rule on Test Procedures for Distribution Transformers. The rule: (1) Established the procedure for sampling and testing distribution transformers so that manufacturers can make representations as to their efficiency, as well as establish that they comply with Federal standards; and (2) contained enforcement provisions, outlining the procedure the Department would follow should it initiate an enforcement action against a manufacturer. 71 FR 24972 (codified at 10 CFR 431.198).

On August 4, 2006, DOE published a NOPR in which it proposed energy conservation standards for distribution transformers (the 2006 NOPR). 71 FR 44355. Concurrently, DOE also issued a technical support document (TSD) that incorporated the analyses it had performed for the proposed rule, including several spreadsheets that remain available on DOE's Web site.[14]

Some commenters asserted that DOE's proposed standards might adversely affect replacement of distribution transformers in certain space-constrained (*e.g.,* vault) installations. In response, DOE issued a notice of data availability and request for comments on this and another issue. 72 FR 6186 (Feb. 9, 2007) (the NODA). In the NODA, DOE sought comment on whether it should include in the LCC analysis potential costs related to size constraints of distribution transformers installed in vaults. DOE also outlined different approaches as to how it might account for additional installation costs for these space-constrained applications and requested comments on linking energy efficiency levels for three-phase liquid-immersed units with those of single-phase units. Finally, DOE addressed how it was inclined to consider a final standard that is based on energy efficiency levels derived from trial standard level (TSL) 2 and TSL 3 for three-phase units and TSLs 2, 3 and 4 for single-phase units. 72 FR 6189. Based on comments on the 2006 NOPR, and the NODA, DOE created new TSLs to address the treatment of three-phase units and single-phase units. In October 2007, DOE published a final rule that created the current energy conservation standards for liquid-immersed and medium-voltage dry-type distribution transformers. 72 FR 58190 (October 12,

[12] Copies of all the draft analyses published before the ANOPR are available on DOE's Web site: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/distribution_transformers_draft_analysis.html.*

[13] Copies of the four draft NOPR analyses published in August 2005 are available on DOE's Web site: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/distribution_transformers_draft_analysis_nopr.html.*

[14] The spreadsheets developed for this rulemaking proceeding are available at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/distribution_transformers_draft_analysis_nopr.html.*

2007) (the 2007 Final Rule) (codified at 10 CFR 431.196(b)–(c)).

The above paragraphs summarize development of the 2007 Final Rule. The preamble to the rule included additional, detailed background information on the history of that rulemaking. 72 FR 58194–96.

After the publication of the 2007 Final Rule, certain parties filed petitions for review in the United States Courts of Appeals for the Second and Ninth Circuits, challenging the rule. Several additional parties were permitted to intervene in support of these petitions. (All of these parties are referred to below collectively as ''petitioners.'') The petitioners alleged that, in developing its energy conservation standards for distribution transformers, DOE did not comply with certain applicable provisions of EPCA and of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*) DOE and the petitioners subsequently entered into a settlement agreement to resolve the petitions. The settlement agreement outlined an expedited timeline for the Department to determine whether to amend the energy conservation standards for liquid-immersed and medium-voltage dry-type distribution transformers. Under the original settlement agreement, DOE was required to publish by October 1, 2011, either a determination that the standards for these distribution transformers do not need to be amended or a NOPR that includes any new proposed standards and that meets all applicable requirements of EPCA and NEPA. Under an amended settlement agreement, the October 1, 2011, deadline for a DOE determination or proposed rule was extended to February 1, 2012. If DOE finds that amended standards are warranted, DOE must publish a final rule containing such amended standards by October 1, 2012.

On March 2, 2011, DOE published in the **Federal Register** a notice of public meeting and availability of its preliminary TSD for the Distribution Transformer Energy Conservation Standards Rulemaking, wherein DOE discussed and received comments on issues such as equipment classes of distribution transformers that DOE would analyze in consideration of amending the energy conservation standards for distribution transformers, the analytical framework, models and tools it is using to evaluate potential standards, the results of its preliminary analysis, and potential standard levels. 76 FR 11396. The notice is available on the above-referenced DOE Web site. To expedite the rulemaking process, DOE began at the preliminary analysis stage because it believes that many of the same methodologies and data sources that were used during the 2007 rulemaking rule remain valid. On April 5, 2011, DOE held a public meeting to discuss the preliminary TSD. Representatives of manufacturers, trade associations, electric utilities, energy conservation organizations, Federal regulators, and other interested parties attended this meeting. In addition, other interested parties submitted written comments about the TSD addressing a range of issues. These comments are discussed in the following sections of the NOPR.

On July 29, 2011, DOE published in the **Federal Register** a notice of intent to establish a subcommittee under the Energy Efficiency and Renewable Energy Advisory Committee (ERAC), in accordance with the Federal Advisory Committee Act and the Negotiated Rulemaking Act, to negotiate proposed Federal standards for the energy efficiency of medium-voltage dry-type and liquid immersed distribution transformers. 76 FR 45471. Stakeholders strongly supported a consensual rulemaking effort. DOE believed that, in this case, a negotiated rulemaking would result in a better informed NOPR and would minimize any potential negative impact of the NOPR. On August 12, 2011, DOE published in the **Federal Register** a similar notice of intent to negotiate proposed Federal standards for the energy efficiency of low-voltage dry-type distribution transformers. 76 FR 50148. The purpose of the subcommittee was to discuss and, if possible, reach consensus on a proposed rule for the energy efficiency of distribution transformers.

The ERAC subcommittee for medium-voltage liquid-immersed and dry-type distribution transformers consisted of representatives of parties having a defined stake in the outcome of the proposed standards, listed below.

- ABB Inc.
- AK Steel Corporation
- American Council for an Energy-Efficient Economy
- American Public Power Association
- Appliance Standards Awareness Project
- ATI-Allegheny Ludlum
- Baltimore Gas and Electric
- Cooper Power Systems
- Earthjustice
- Edison Electric Institute
- Fayetteville Public Works Commission
- Federal Pacific Company
- Howard Industries Inc.
- LakeView Metals
- Efficiency and Renewables Advisory Committee member
- Metglas, Inc.
- National Electrical Manufacturers Association
- National Resources Defense Council
- National Rural Electric Cooperative Association
- Northwest Power and Conservation Council
- Pacific Gas and Electric Company
- Progress Energy
- Prolec GE
- U.S. Department of Energy

The ERAC subcommittee for medium-voltage liquid-immersed and dry-type distribution transformers held meetings on September 15 through 16, 2011, October 12 through 13, 2011, November 8 through 9, 2011, and November 30 through December 1, 2011; the ERAC subcommittee also held public webinars on November 17 and December 14. During the course of the September 15, 2011, meeting, the subcommittee agreed to its rules of procedure, ratified its schedule of the remaining meetings, and defined the procedural meaning of consensus. The subcommittee defined consensus as unanimous agreement from all present subcommittee members. Subcommittee members were allowed to abstain from voting for an efficiency level; their votes counted neither toward nor against the consensus.

DOE presented its draft engineering, life-cycle cost and national impacts analysis and results. During the meetings of October 12 through 13, 2011, DOE presented its revised analysis and heard from subcommittee members on a number of topics. During the meetings on November 8 through 9, 2011, DOE presented its revised analysis, including life-cycle cost sensitivities based on exclusion ZDMH and amorphous steel as core materials. During the meetings on November 30 through December 1, 2011, DOE presented its revised analysis based on 2011 core-material prices.

At the conclusion of the final meeting, subcommittee members presented their efficiency level recommendations. For medium-voltage liquid-immersed distribution transformers, the advocates, represented by the Appliance Standards Awareness Project (ASAP), recommended efficiency level (also referred to as ''EL'') 3 for all design lines (also referred to as ''DLs''). The National Electrical Manufacturers Association (NEMA) and AK Steel recommended EL 1 for all DLs except for DL 2, for which no change from the current standard was recommended. Edison Electric Institute (EEI) and ATI Allegheny Ludlum recommended EL1 for DLs 1, 3, and 4 and no change from the current standard or a proposed standard of less

than EL 1 for DLs 2 and 5. Therefore, the subcommittee did not arrive at consensus regarding proposed standard levels for medium-voltage liquid-immersed distribution transformers.

For medium-voltage dry-type distribution transformers, the subcommittee arrived at consensus and recommended a proposed standard of EL2 for DLs 11 and 12, from which the proposed standards for DLs 9, 10, 13A, 13B would be scaled. Transcripts of the subcommittee meetings and all data and materials presented at the subcommittee meetings are available at the DOE Web site at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/distribution_transformers.html*.

The ERAC subcommittee held meetings on September 28, 2011, October 13–14, 2011, November 9, 2011, and December 1–2, 2011, for low-voltage distribution transformers. The ERAC subcommittee also held webinars on November 21, 2011, and December 20, 2011. During the course of the September 28, 2011, meeting, the subcommittee agreed to its rules of procedure, finalized the schedule of the remaining meetings, and defined the procedural meaning of consensus. The subcommittee defined consensus as unanimous agreement from all present subcommittee members. Subcommittee members were allowed to abstain from voting for an efficiency level; their votes counted neither toward nor against the consensus.

The ERAC subcommittee for low-voltage distribution transformers consisted of representatives of parties having a defined stake in the outcome of the proposed standards.

- AK Steel Corporation
- American Council for an Energy-Efficient Economy
- Appliance Standards Awareness Project
- ATI-Allegheny Ludlum
- EarthJustice
- Eaton Corporation
- Federal Pacific Company
- Lakeview Metals
- Efficiency and Renewables Advisory Committee member
- Metglas, Inc.
- National Electrical Manufacturers Association
- Natural Resources Defense Council
- ONYX Power
- Pacific Gas and Electric Company
- Schneider Electric
- U.S. Department of Energy

DOE presented its draft engineering, life-cycle cost and national impacts analysis and results. During the meetings of October 14, 2011, DOE presented its revised analysis and heard from subcommittee members on various topics. During the meetings of November 9, 2011, DOE presented its revised analysis. During the meetings of December 1, 2011, DOE presented its revised analysis based on 2011 core-material prices.

At the conclusion of the final meeting, subcommittee members presented their energy efficiency level recommendations. For low-voltage dry-type distribution transformers, the advocates, represented by ASAP, recommended EL4 for all DLs, NEMA recommended EL 2 for DLs 7 and 8, and no change from the current standard for DL 6. EEI, AK Steel and ATI Allegheny Ludlum recommended EL 1 for DLs 7 and 8, and no change from the current standard for DL 6. The subcommittee did not arrive at consensus regarding a proposed standard for low-voltage dry-type distribution transformers. Transcripts of the subcommittee meetings and all data and materials presented at the subcommittee meetings are available at the DOE Web site at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/distribution_transformers.html*.

III. General Discussion

A. Test Procedures

Section 7(c) of the Process Rule [15] indicates that DOE will issue a final test procedure, if one is needed, prior to issuing a proposed rule for energy conservation standards. DOE published its test procedure for distribution transformers in the **Federal Register** as a final rule on April 27, 2006. 71 FR 24972.

1. General

Currently, DOE requires distribution transformers to comply with standards with their windings in the configuration that produces the greatest losses. (10 CFR 431, Subpart K, Appendix A) During the April 5, 2011, public meeting, DOE addressed issues and solicited comments about amending the energy conservation standards for distribution transformers, the analytical framework and results of its preliminary analysis, and potential energy efficiency standards. At the outset, DOE proposed to amend the test procedure under appendix A to subpart K of 10 CFR part 431, Uniform Test Method for Measuring the Energy Consumption of Distribution Transformers. DOE proposed to allow compliance testing in any secondary configuration and at the lowest basic impulse level (BIL) rating and to require compliance at the lowest BIL at which dual or multiple voltage distribution transformers are rated to operate.

The Northwest Power and Conservation Council (NPCC) and Northwest Energy Efficiency Alliance (NEEA) [16] jointly submitted comments that the test procedure should adhere to specifications that do not make it difficult for the most challenging designs to comply with the standard, or else these transformer designs may be eliminated from the marketplace. (NPCC/NEEA, No. 11 at p. 2) [17] NPCC and NEEA further noted that they would support a change to allow manufacturers to test at a single voltage for models with a range of voltage taps that is ± 5 percent, using the middle voltage of that range. (NPCC/NEEA, No. 11 at p. 3) Finally, NPCC and NEEA requested that DOE explicitly explain the benefit of any changes to the test procedure, since certain changes could make future and past ratings more difficult to consistently compare. (NPCC/NEEA, No. 11 at p. 3)

NEMA commented that distribution transformers are rated to operate at multiple kilovolt ampere (kVA) ratings corresponding to passive cooling, active cooling, or a combination of both. NEMA stated that the regulation should clarify that transformers with multiple kVA ratings should comply at the base rating (passive cooling). (NEMA, No. 13 at pp. 2–3)

Although DOE does not intend to eliminate features offering unique utility from the marketplace, it wishes to gather more information on the specific efficiency differences between winding configurations as well as the relative frequencies of their uses. With this in mind and considering the comments, DOE proposes to continue requiring compliance testing in the primary and secondary winding configuration with the highest losses, as is currently required under appendix A to subpart K of 10 CFR part 431. DOE agrees that passive cooling is the most common

[15] The Process Rule provides guidance on how DOE conducts its energy conservation standards rulemakings, including the analytical steps and sequencing of rulemaking stages (such as test procedures and energy conservation standards). (10 CFR part 430, Subpart C, Appendix A).

[16] The Northwest Power and Conservation Council (NPCC) and Northwest Energy Efficiency Alliance (NEEA) submitted joint comments and are hereinafter referred to as NPCC/NEEA.

[17] This short-hand citation format is used throughout this document. For example: ''(NPCC/NEEA, No. 11 at p. 2)'' refers to a (1) a joint statement that was submitted by NPCC and NEEA and is recorded at *http://www.regulations.gov/#!home* in the docket under ''Energy Conservation Standards for Distribution Transformers,'' Docket Number EERE–2010–BT–STD–0048, as comment number 11; and (2) a passage that appears on page 2 of that statement.

mode of operation for distribution transformers employed in power distribution and clarifies that manufacturers are only required to demonstrate compliance at kVA ratings that correspond to passive cooling.[18]

DOE requests comment and corroborating data on how often distribution transformers are operated with their primary and secondary windings in different configurations, and on the magnitude of the additional losses in less efficient configurations.

2. Multiple kVA Ratings

Currently, DOE is nonspecific on which kVA rating should be used to assess compliance in the case of distribution transformers with more than one kVA.

ABB's recommendations on transformers with multiple kVA ratings depended on how the transformer was cooled. For naturally-cooled transformers, ABB recommended that they should be required to meet the efficiency standard for every kVA rating. However, ABB suggested that forced-cooled transformers should only have to meet the efficiency standard at the naturally-cooled kVA rating. This is because the forced-cooled rating, which is meant only for temporary overload conditions, is dependent on the operation of auxiliary cooling fans that have a lower operating life than the transformer. (ABB, No. 14 at pp. 3–5)

DOE has received nearly unanimous feedback that transformers in distribution applications are seldom designed to rely on active cooling even occasionally and that the majority of designs lack active cooling altogether. DOE wishes to clarify that manufacturers are only required to demonstrate compliance at kVA ratings that correspond to passive cooling.

3. Dual/Multiple-Voltage Basic Impulse Level

Currently, DOE requires distribution transformers to comply with standards using the BIL rating of the winding configuration that produces the greatest losses. (10 CFR 431, Subpart K, Appendix A)

Several stakeholders commented that distribution transformers with multiple BIL ratings should comply with the efficiency based on the highest BIL rating, as the transformer core is based on the highest BIL rating. (Hammond (HPS), No. 3 at p. 1; NEMA, No. 13 at p. 2; and FPT, No. 27 at p. 13) NEMA noted that for dual/multiple distribution transformers with varying BIL levels, DOE should align its requirements with those of the Institute of Electrical and Electronics Engineers (IEEE) standards (C57.12.00 for liquid-filled, NEMA ST20–1992:3.3 for low-voltage) and require testing in the ''as shipped'' condition, which would base the efficiency on the highest BIL rating, matching IEEE and industry practice. (NEMA, No. 13 at p. 2) Federal Pacific Transformers (FPT) stated that medium-voltage distribution transformers with multiple configurations should be held to the efficiency standard of the configuration with the highest BIL rating because the distribution transformer is required to be much larger for the higher BIL rating and, therefore, cannot reasonably meet the energy efficiency level of the lower BIL rating. (FPT, No. 27 at p. 13) FPT also expressed their support for testing on the highest BIL efficiency rating for re-connectable distribution transformers. (FPT, Pub. Mtg. Tr., No. 34 at p. 40)[19]

ABB commented that DOE should not change the test requirement to allow compliance at the lowest BIL rating. According to ABB, there is no way to ascertain which operating condition a distribution transformer will use over its lifetime. ABB stated that DOE should require that the efficiency be met on any operational configuration for which the distribution transformer is designed for continuous operation. (ABB, No. 14 at p. 2)

DOE needs to gather more information in order to be certain that allowing compliance at any BIL rating would not result in lowered energy savings relative to what is predicted by DOE's analysis. DOE proposes to maintain the current requirement to comply in the configuration that gives rise to the greatest losses.

4. Dual/Multiple-Voltage Primary Windings

Currently, DOE requires manufacturers to comply with energy conservation standards with distribution transformer primary windings (''primaries'') in the configuration that produces the highest losses. (10 CFR 431, Subpart K, Appendix A)

Where DOE invited additional comments about the test procedures, Howard Industries added that, under the presumption that DOE would allow compliance testing in any of the secondary configurations (''secondaries''), DOE should insert the word ''primary'' into the testing requirements [at section 5.0, Determining the Efficiency Value of the Transformer, under appendix A to subpart K of 10 CFR part 431], and require the manufacturer to ''determine the basic model's efficiency at the 'primary' voltage at which the highest losses occur or at each 'primary' voltage at which the distribution transformer is rated to operate.'' Howard Industries noted that, for multiple-voltage distribution transformers, this insertion would clarify that distribution transformer efficiency is determined by the primary voltage and that the low-voltage or secondary winding configuration that is used would be at the manufacturer's discretion. (HI, No. 23 at p. 2)

HVOLT commented that distribution transformers with dual or multiple-voltage primary windings should be allowed to comply while the primaries are connected in series. HVOLT explained that utilities purchase these transformers to upgrade a distribution circuit to higher voltages within a few years of purchase and that these transformers will spend more than 90 percent of their lives with the primary windings connected in series. (HVOLT, No. 33 at p. 2)

DOE understands that, in contrast to the secondary windings, reconfigurable primaries typically exhibit a larger variation in efficiency between series and primary connections. As the above commenters have pointed out, however, such transformers are often purchased with the intent of upgrading the local power grid to a higher operating voltage with lowered overall system losses. In that sense, transformers with reconfigurable primaries can be seen as a stepping stone toward greater overall energy savings, even if those savings do not occur within the transformer itself.

DOE conducted several sensitivity analyses to examine the effects of a reconfigurable primary winding on efficiency and found that the difference between the efficiency of the secondary and the efficiency of the primary was more significant than in the case of configurable secondary windings.

DOE wishes to obtain more information on both the difference in losses between different winding configurations as well as the different configurations' relative frequency of operation in practice. DOE requests comment on this proposal to continue to mandate compliance in the highest-loss configuration and data illustrating the

[18] Passive cooling is cooling that does not require fans, pumps, or other energy-consuming means of increasing thermal convection.

[19] This short-hand citation format for the public meeting transcript is used throughout this document. For example: ''(FPT, Pub. Mtg. Tr., No. 34 at p. 40)'' refers to a comment on the page number of the transcript of the ''Public Meeting on Energy Conservation Standard Preliminary Analysis for Distribution Transformers,'' held in Washington, DC, April 5, 2011.

efficiency differences between primary winding configurations.

5. Dual/Multiple-Voltage Secondary Windings

Currently, DOE requires transformers to comply with their secondary windings in the configuration that produces the greatest losses. (10 CFR 431, Subpart K, Appendix A)

Interested parties commented that DOE should not change the current test requirement to permit compliance testing in any secondary configuration at the lowest BIL rating for transformers with dual/multiple-voltage secondary windings, and that these transformers should comply with an energy efficiency level using the combination of connections that produces the highest losses. (HPS, No. 3 at p.1; NPCC/NEEA, No. 11 at p. 3; and ABB, No. 14 at p. 2) ABB also noted that there is no way to determine the connection on which a unit will be operated over its lifetime.

Schneider Electric (SE) commented that NEMA ST20–1992: 3.3 [Dry-Type Transformers for General Applications, NEMA ST 20–1992(R1997)] requires that ''low-voltage [transformers] be shipped with the connections done for the highest voltage'' and requested that ''all compliance testing be done in the configuration requirement of ST–20.'' (SE., No. 18 at p. 5) Similarly, NEMA commented that ''DOE should align its requirements with those of IEEE standards (C57.12.00 for liquid-filled, NEMA ST 20–1992: 3.3 for low-voltage), requiring testing in the 'as shipped' condition.'' (NEMA, No. 13 at p. 2) Further, NEMA noted that industry practice is to ship these units in the series connection. Similarly, FPT asserted that, ''for units with multiple (series-parallel) low-voltage ratings, the efficiency standard should be based on the highest voltage (series) connection, which matches the IEEE standard and industry practice.'' (FPT, No. 27 at p. 11)

Several interested parties expressed support for DOE's proposal to allow compliance testing in any secondary configuration at the lowest voltage rating. (Power Partners, Inc. (PP), Pub. Mtg. Tr., No. 34 at p. 40; HVOLT, No. 33 at p. 2; HI, No. 23 at p.2; and PP, No. 19 at p. 2) HVOLT noted that about 99 percent of dual/multiple-voltage single-phase, pole-type transformers are used in the series connection, and the work to otherwise reconnect to the secondary is burdensome. (HVOLT, No. 33 at p.2) Similarly, HI pointed out that very few transformers are ever reconnected for parallel operation and that testing requirements in a parallel configuration can be burdensome. (HI, No. 23 at p. 2)

Furthermore, HVOLT commented that a distribution transformer that is designed for a dual voltage rating does not have an even multiple quantity of series connections compared to parallel connection designs. This means that there are already unused windings that will be in the parallel connection. Because the testing procedure requires that they be tested on the lowest BIL connections, these types of distribution transformers effectively have a higher efficiency requirement. HVOLT believes dual voltage distribution transformers are being unduly burdened by the test procedure. (HVOLT, Pub. Mtg. Tr., No. 34 at pp. 38–39)

HI recommended that DOE adjust the efficiency value by 0.1 for dual/multiple-voltage liquid-immersed distribution transformers with windings having a ratio other than 2:1, due to the complexity of the winding for these distribution transformers. HI noted that a similar approach was taken by the Canadian Standards Associations Standards. (HI, No. 23 at p. 2)

DOE understands that some distribution transformers may be shipped with reconfigurable secondary windings, and that certain configurations may have different efficiencies. Currently, DOE requires distribution transformers to be tested in the configuration that exhibits the highest losses, which is usually with the secondary windings in parallel. Whereas the IEEE Standard [20] requires a distribution transformer to be shipped with the windings in series, a manufacturer testing for compliance could need to test the distribution transformer for energy efficiency, disassemble the unit, reconfigure the windings, and reassemble the unit for shipping at added time and expense. Nonetheless, DOE would need to obtain more specific information on the potential net energy losses associated with permitting distribution transformers to be tested in any secondary winding configuration and proposes to maintain the current requirement of compliance in the configuration that produces the greatest losses.

DOE requests comment on secondary winding configurations, and on the magnitude of the additional losses associated with the less efficient configurations as well as the relative frequencies of operation in each winding configuration.

6. Loading

Currently, DOE requires that both liquid-immersed and medium-voltage, dry-type distribution transformers comply with standards at 50 percent loading and that low-voltage, dry-type distribution transformers comply at 35 percent loading.

Warner Power (WP) commented that a single 35 percent test load for low-voltage dry-type distribution transformers (LVDTs) does not adequately reflect known service conditions at widely varying, and often low, average loads. It cited several studies indicating a lower average load factor and a shrinking load factor and recommended LVDTs be certified at 15 percent and 35 percent loading. (WP, No. 30 at pp. 1–2) In addition, Warner Power suggested that a weighted curve between 10 percent and 80 percent load factors would be better than a single 35 percent load factor. It recommended using published data to more accurately reflect real load conditions, accounting for daily, weekly, and seasonal variations. For LVDT transformers, it pointed out that the load profile should characterize the typical use in different types of buildings. (WP, No. 30 at p.5) NPCC and NEEA opined that, with better loading data for distribution transformers, they would support testing at multiple loading points, such as 15, 35, 50 and 70 percent, with a weighted-average calculation that is unique to each class. They noted, however, that such data is likely not available. (NPCC/NEEA, No. 11 at pp. 2–3)

HVOLT commented that the test procedure-required load values for all three categories of distribution transformers appeared reasonable for the foreseeable future. Otherwise, with electric vehicles and plug-in hybrids entering the market, HVOLT opined that root-mean-square loading will increase in the long-term but may take decades to have an effect. (HVOLT, No. 33 at p. 1) NPCC and NEEA announced that they are collecting additional field data to inform the appropriateness of the test procedure loading points. (NPCC/NEEA, No. 11 at p. 2)

NEMA, ABB, and Schneider Electric (SE) all commented that DOE should not modify its test procedures by considering weighted-average loadings for core deactivation efficiency standards. (NEMA, No. 13 at p. 2; ABB, No. 14 at pp. 2–3; and SE., Pub. Mtg. Tr., No. 34 at p. 57) ABB further clarified that this approach would be inaccurate because the true load varies by every distinct installation. Instead, it asserted that the current load factors are more appropriate because they reflect the aggregate impact on the national grid. (ABB, No. 14 at pp. 2–3)

[20] IEEE C57.12.00.

NPCC and NEEA recommended that DOE attempt to gather data on actual core deactivation designs and control algorithms before it changes the test procedure. Additionally, NPCC and NEEA suggested that DOE gather data on the performance of distribution transformers under various load conditions. If this data is unavailable or inconclusive, they suggested that DOE not change the test procedure at this time but rather ensure that core deactivation technology is examined in the next rulemaking for distribution transformers. (NPCC/NEEA, No. 11 at p. 3)

Warner Power (WP) indicated its intent to submit data concerning modified test procedures which would better capture core deactivation technologies. (WP, Pub. Mtg. Tr., No. 34 at p. 42)

DOE is proposing to maintain the use of a single, discrete loading point for distribution transformers because the use of weighted-average loadings would represent a fairly significant change in the test procedure, possibly causing some units that meet energy conservation standards to no longer do so. In the future, DOE may consider modifying this approach. DOE welcomes relevant data in conjunction with comments on typical distribution transformer loading profiles.

B. Technological Feasibility

1. General

There are distribution transformers available at all of the energy efficiency levels considered in today's notice of proposed rulemaking. Therefore, DOE believes all of the energy efficiency levels adopted by today's notice of proposed rulemaking are technologically feasible.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt, or decline to adopt, an amended or new standard for a type of covered product, section 325(o)(2) of EPCA, 42 U.S.C. 6295(o)(2), requires that DOE determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible. While developing the energy conservation standards for liquid-immersed and medium-voltage, dry-type distribution transformers that were codified under 10 CFR 431.196, DOE determined the maximum technologically feasible (''max-tech'') energy efficiency level through its engineering analysis using the most efficient materials, such as core steels and winding materials, and applied design parameters that drove distribution transformer software to create designs at the highest efficiencies achievable at the time. 71 FR 44362 (August 4, 2006) and 72 FR 58196 (October 12, 2007). DOE used these designs to establish max-tech levels for its LCC analysis and scaled them to other kVA ratings within a given design line, thereby establishing max-tech efficiencies for all the distribution transformer kVA ratings.

C. Energy Savings

1. Determination of Savings

Section 325(o)(2)(A) of EPCA, 42 U.S.C. 6295(o)(2)(A), requires that any new or amended standard must be chosen so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. In determining whether economic justification exists, key factors include the total projected amount of energy savings likely to result directly from the standard and the savings in operating costs throughout the estimated average life of the covered equipment. To understand the national economic impact of potential efficiency regulations for distribution transformers, DOE conducted a national impact analysis (NIA) using a spreadsheet model to estimate future national energy savings (NES) from amended energy conservation standards.[21] For each TSL, DOE forecasted energy savings beginning in 2016, the year that manufacturers would be required to comply with amended standards, and ending in 2045. DOE quantified the energy savings for each TSL as the difference in energy consumption between the ''standards case'' and the ''base case.'' The base case represents the forecast of energy consumption in the absence of amended mandatory efficiency standards, and takes into consideration market demand for more-efficient equipment.

The NIA spreadsheet model calculates the electricity savings in ''site energy'' expressed in kilowatt-hours (kWh). Site energy is the energy directly consumed by distribution transformer products at the locations where they are used. DOE reports national energy savings on an annual basis in terms of the aggregated source (primary) energy savings, which is the savings in the energy that is used to generate and transmit the site energy. (See TSD chapter 10.) To convert site energy to source energy, DOE derived annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) *Annual Energy Outlook 2011 (AEO2011).*

2. Significance of Savings

As noted above, 42 U.S.C. 6295(o)(3)(B) prevents DOE from adopting a standard for covered equipment if such a standard would not result in ''significant'' energy savings. While EPCA does not define the term ''significant,'' the U.S. Court of Appeals for the District of Columbia, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in this context to be savings that were not ''genuinely trivial.'' The energy savings for all of the TSLs considered in this rulemaking are non-trivial and, therefore, DOE considers them ''significant'' within the meaning of EPCA section 325(o).

D. Economic Justification

1. Specific Criteria

As noted previously, EPCA requires DOE to evaluate seven factors to determine whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following sections describe how DOE has addressed each of the seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of an amended standard on manufacturers, DOE first determines the quantitative impacts using an annual cash-flow approach. This includes both a short-term assessment, based on the cost and capital requirements during the period between the issuance of a regulation and when entities must comply with the regulation, and a long-term assessment over a 30-year analysis period. The industry-wide impacts analyzed include INPV (which values the industry on the basis of expected future cash flows), cash flows by year, changes in revenue and income, and other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, paying particular attention to impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of different DOE regulations and other regulatory requirements on manufacturers.

[21] The NIA spreadsheet model is described in section IV.G of this notice.

For individual consumers, measures of economic impact include the changes in LCC and the PBP associated with new or amended standards. The LCC, which is separately specified in EPCA as one of the seven factors to be considered in determining the economic justification for a new or amended standard (42 U.S.C. 6295(o)(2)(B)(i)(II)), is discussed in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts on consumers over the forecast period used in a particular rulemaking.

Federal Pacific suggested that DOE establish reference efficiencies by rating, as defined by NEMA Premium, for those users who want efficiencies higher than current minimum efficiencies. However, they did not want these reference efficiencies to become the new minimum efficiency mandates. (FPT, No. 27 at p. 2)

The National Rural Electric Cooperative Association (NRECA) recommended that DOE not raise the efficiency standards for the liquid-filled distribution transformers, since many rural utilities with low distribution transformer loads cannot economically justify the current energy efficiency level. (NRECA, No. 31 and 36 at p. 1)

DOE appreciates the comments and considers impacts to consumers, manufacturers, and utilities in TSD chapters 8, 12, and 14, respectively. DOE welcomes comment on these analyses and on any subset of consumers, manufacturers, or utilities that could be disproportionately affected.

b. Life-Cycle Costs

The LCC is the sum of the purchase price of a type of equipment (including its installation) and the operating expense (including energy and maintenance and repair expenditures) discounted over the lifetime of the product. The LCC savings for the considered energy efficiency levels are calculated relative to a base case that reflects likely trends in the absence of amended standards. The LCC analysis requires a variety of inputs, such as equipment prices, equipment energy consumption, energy prices, maintenance and repair costs, equipment lifetime, and consumer discount rates. DOE assumed in its analysis that consumers will purchase the considered equipment in 2016.

To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values with probabilities attached to each value. A distinct advantage of this approach is that DOE can identify the percentage of consumers estimated to receive LCC savings or experience an LCC increase, in addition to the average LCC savings associated with a particular standard level. In addition to identifying ranges of impacts, DOE evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be disproportionately affected by a national standard.

c. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE uses the NIA spreadsheet results in its consideration of total projected energy savings.

d. Lessening of Utility or Performance of Products

In establishing classes of products, and in evaluating design options and the impact of potential standard levels, DOE sought to develop standards for distribution transformers that would not lessen the utility or performance of these products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) None of the TSLs presented in today's NOPR would substantially reduce the utility or performance of the equipment under consideration in the rulemaking.

DOE requests comment on the possibility of reduced equipment performance or utility resulting from today's proposed standards, particularly the risk of reducing the ability to perform periodic maintenance and the risk of increasing vibration and acoustic noise.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from standards. It also directs the Attorney General of the United States (Attorney General) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) DOE will transmit a copy of today's proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will address the Attorney General's determination in the final rule.

f. Need for National Energy Conservation

Certain benefits of the proposed standards are likely to be reflected in improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity may also result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity. (See 42 U.S.C. 6295(o)(2)(B)(i)(VI))

Energy savings from the proposed standards are also likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE reports the environmental effects from the proposed standards, and from each TSL it considered, in the environmental assessment contained in chapter 15 in the NOPR TSD. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) In developing the proposals of this notice, DOE has also considered the matter of electrical steel availability. This factor is discussed further in section V.B.8.

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first-year of energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and payback period (PBP) analyses generate values used to calculate the PBP for consumers of potential amended energy conservation standards. These analyses include, but are not limited to, the three-year PBP contemplated under the rebuttable presumption test. However, DOE routinely conducts an economic analysis that considers the full range of impacts to the consumer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The

results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section V.B.1.c of this NOPR and chapter 8 of the NOPR TSD.

IV. Methodology and Discussion of Related Comments

DOE used two spreadsheet tools to estimate the impact of today's proposed standards. The first spreadsheet calculates LCCs and PBPs of potential new energy conservation standards. The second provides shipments forecasts and calculates national energy savings and net present value impacts of potential new energy conservation standards. DOE also assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM). The two spreadsheets are available online at the rulemaking Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/distribution_transformers.html*.

Additionally, DOE estimated the impacts of energy conservation standards for distribution transformers on utilities and the environment. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS model simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *Annual Energy Outlook (AEO),* a widely known energy forecast for the United States. The version of NEMS used for appliance standards analysis is called NEMS–BT [22] and is based on the *AEO* version with minor modifications.[23] The NEMS–BT offers a sophisticated picture of the effect of standards because it accounts for the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

For the market and technology assessment, DOE develops information that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include scope of coverage, definitions, equipment classes, types of products sold and offered for sale, and technology options that could improve the energy efficiency of the products under examination. Chapter 3 of the TSD contains additional discussion of the market and technology assessment.

1. Scope of Coverage

This section addresses the scope of coverage for today's proposal, stating which products would be subject to amended standards. The numerous comments DOE received on the scope of today's proposal are also summarized and addressed in this section.

a. Definitions

Today's proposed standards rulemaking concerns distribution transformers, which include three categories: liquid-immersed, low-voltage dry-type (LVDT) and medium-voltage dry-type (MVDT). The definition of a distribution transformer was presented in EPACT 2005 and then further refined by DOE when it was codified into 10 CFR 431.192 by the April 27, 2006 final rule for distribution transformer test procedures (71 FR 24995) as follows:

Distribution transformer means a transformer that—

(1) Has an input voltage of 34.5 kV or less;

(2) Has an output voltage of 600 V or less;

(3) Is rated for operation at a frequency of 60 Hz; and

(4) Has a capacity of 10 kVA to 2500 kVA for liquid-immersed units and 15 kVA to 2500 kVA for dry-type units; but

(5) The term ''distribution transformer'' does not include a transformer that is an—

(i) Autotransformer;

(ii) Drive (isolation) transformer;

(iii) Grounding transformer;

(iv) Machine-tool (control) transformer;

(v) Non-ventilated transformer;

(vi) Rectifier transformer;

(vii) Regulating transformer;

(viii) Sealed transformer;

(ix) Special-impedance transformer;

(x) Testing transformer;

(xi) Transformer with tap range of 20 percent or more;

(xii) Uninterruptible power supply transformer; or

(xiii) Welding transformer.

Additional detail on the definitions of each of these excluded transformers can found in TSD chapter 3.

DOE received multiple comments seeking clarification on various terms used in the definition of a distribution transformer. NEMA requested that DOE amend the definitions of two transformer types explicitly excluded from the distribution transformer definition, namely ''rectifier transformer'' and ''testing transformer.'' NEMA suggested that both definitions should require the nameplates of such transformers to identify the transformers as being for such uses only. (NEMA, No. 13 at p. 10) Furthermore, NEMA recommended that transformers used inside underground tunneling equipment should be added to the definition for underground mining distribution transformers because this equipment is specialized and requires a compact transformer. (NEMA, No. 13 at p. 10) FPT agreed with NEMA and recommended that DOE amend the definition of ''underground mining transformer'' with the following sentence: ''The term 'mining' may also be understood to mean underground tunneling or digging.'' FPT added that the term ''mining'' should be clarified to encompass any underground operation involving the removal of material underground, such as digging or tunneling, which have the same restrictions with the size of distribution transformers, but might not be considered to be mining applications. (FPT, No. 27 at pp. 10–11) Finally, PP commented that DOE should clarify the definitions of input and output voltage to reflect the three-phase system voltages and not the line to ground voltage, which is typically the input voltage for single-phase transformers. (PP, No. 1 at p. 1)

DOE agrees that these additions to the definitions of ''rectifier transformer'' and ''testing transformer'' are helpful in aiding the consumer to distinguish rectifier and testing transformers and therefore proposes to amend its definitions correspondingly. Additionally, DOE believes that transformers used for the removal of material underground are subject to similar space constraints as traditional mining transformers and therefore their ability to meet higher efficiency standards are similarly restricted. However, DOE wishes to learn more about the nature of those applications in order to define the units precisely. Consequently, DOE proposes to maintain the current definition of ''mining transformer'' unless it is able to determine that the expansion, as

[22] BT stands for DOE's Building Technologies Program.

[23] The EIA allows the use of the name ''NEMS'' to describe only an AEO version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from AEO assumptions, the name ''NEMS–BT'' refers to the model as used here. For more information on NEMS, refer to The National Energy Modeling System: An Overview, DOE/EIA–0581 (98) (Feb.1998), available at: *http://tonto.eia.doe.gov/FTPROOT/forecasting/058198.pdf*.

suggested by NEMA and FPT, is warranted and able to be implemented with sufficient specificity. DOE requests comment on that proposal and any information useful in understanding how transformers used in certain underground applications differ and could be defined precisely. Finally, DOE also wishes to remove any ambiguity in the terms ''input voltage'' and ''output voltage'' and requests comment on where that ambiguity lies.

Multiple interested parties submitted comments regarding the kVA ratings that are currently included in the scope of coverage. PP commented that DOE should consider removing single-phase liquid-immersed distribution transformers rated above 250 kVA with a low-voltage rating of 600V from the scope of the regulation. They contended that these transformers constitute a very low volume of shipments (481 units in 2009) and MVA capacity shipped (201 MVA in 2009) and therefore the overall national energy savings would not be significant. (PP, No. 19 at pp. 1–3; Pub. Mtg. Tr., No. 34 at p. 34) PP added that the impact of increased weight and dimensions is greater in these sizes where maximum tank size and weight constraints are critical. Moreover, PP proposed that DOE should consider 500 kVA the upper limit of kVA ratings covered and shift the lower limit from 10 to 5 kVA. (PP, Pub. Mtg. Tr., No. 34 at pp. 46, 73–74; PP, No. 19 at pp. 1–2) Similarly, NPCC and NEEA urged DOE to decide whether to include single-phase liquid-immersed distribution transformers down to 5 kVA in the scope of coverage. (NPCC/NEEA, No. 11 at p. 9)

BBF and Associates suggested that DOE investigate increasing the scope of the rulemaking to include transformers from 2500 kVA to 20 MVA. (BBF, Pub. Mtg. Tr., No. 34 at p. 279) CDA recommended that DOE include transformers up to 30,000 kVA (30 MVA) in its scope, including sub-station transformers. It noted that these units are within the distribution system, and are substantial in unit shipment volumes. (CDA, No. 17 at pp. 1–2, 4)

DOE understands that larger (250–833 kVA) single-phase, liquid-immersed units are currently covered and is not proposing to exclude them from consideration for this rulemaking. Because these ratings were covered by the previous rulemaking for distribution transformers, DOE is statutorily prohibited from backsliding and excluding such products from regulation at this time. (See 42 U.S.C. 6295(o)(1)6316(a)) However, DOE notes that it is accounting for the added life-cycle costs of larger and heavier transformers and discusses its methodology for this in chapter 6 of the TSD. Additionally, DOE determined during the previous standards rulemaking that 5 kVA transformers were below the kVA limit ''commonly understood to be distribution transformers.'' 69 FR 45381. DOE proposes to maintain that stance for this rulemaking as these units are generally too small to be employed in power distribution and collectively consume extremely little power. Similarly, units larger than 2.5 MVA (DOE's current upper limit) are usually considered substation transformers, which DOE is not proposing to cover. DOE invites comment on its proposal to maintain the current scope of coverage.

Interested parties also solicited clarification from DOE on transformers that are used in a variety of applications. FPT requested that DOE clarify whether existing efficiency standards apply to transformers used in aircraft, trains/locomotives, offshore drilling platforms, mobile substations, ships, and other similar applications. (FPT, No. 27 at p. 2) Furthermore, FPT recommended that DOE investigate whether transformers being used in wind farms or solar energy applications should be exempted since these designs should be optimized at higher loading levels than the test procedure loading points of 35 percent (low-voltage dry-type) and 50 percent (liquid-immersed and medium-voltage dry-type). (FPT, No. 27 at p. 2) Lastly, CDA commented that DOE should expand the scope of the rulemaking to include step-up transformers of kVA sizes that are currently included in the scope, such as transformers used in wind farms. (CDA, No. 17 at pp. 2–3)

EPACT 2005 defined the term ''distribution transformer,'' 42 U.S.C. 6291(35)(B)(ii), to mean a transformer that (i) has an input voltage of 34.5 kilovolts or less; (ii) has an output voltage of 600 volts or less; and (iii) is rated for operation at a frequency of 60 Hertz. The definition goes on to generally exclude certain specialized-application distribution transformers. At this time, DOE is not proposing to cover distribution transformers used in mobile applications because they do not represent traditional power distribution. For example, aircraft and marine transformers frequently operate at 400 Hz, and mobile substation transformers often fall outside the currently defined voltage and kVA ranges. Furthermore, transformers used in mobile applications could be unduly impacted by any increases in size and weight required to reach higher efficiencies. DOE requests comment on the topic of transformers used in mobile applications and any data helpful in considering whether standards are warranted. DOE also requests comment on the likelihood of this exclusion serving as a loophole in the face of increasing standards.

DOE does not propose to exclude transformers used in renewable energy applications simply because of the potential difference in loading that they may experience. DOE currently understands that the users who buy transformers for those applications tend to value losses highly and that such transformers would have little trouble meeting standards. Furthermore, DOE notes that its choices for the test procedure loading points do not imply that it intends to exclusively cover transformers with precisely those loading values. Rather, DOE accounts for consumers purchasing transformers optimized for loading values other than the test procedure value in its LCC analysis.

DOE proposes to continue to not set standards for step-up transformers, because they are not ordinarily considered to be performing a power distribution function. However, DOE is aware that step-up transformers may be able to be used in place of step-down transformers and may represent a potential loophole as standards increase. DOE requests comment on its proposal to continue not to set standards for step-up transformers.

Finally, DOE received an inquiry with regards to how it plans to deal with core deactivation technology. Specifically, Schneider Electric wanted to know if DOE would change the definition of transformers to include banks of transformers. (SE., Pub. Mtg. Tr., No. 34 at p. 57) Core-deactivation technology employs a system of smaller transformers to replace a single, larger transformer. For example, using this technology, three transformers sized at 25 kVA and operated in parallel could replace a single 75 kVA transformer. The smaller transformers that compose the system can then be activated and deactivated using core deactivation technology based on the loading demand. At present, DOE is not proposing to set efficiency standards for banks of transformers, but notes that each constituent transformer would be subject to an efficiency standard if, on its own, it meets the definition of a distribution transformer.

b. Underground Mining Transformer Coverage

In the October 12, 2007, final rule on energy conservation standards for distributions transformers, DOE codified

into 10 CFR 431.192 the definition of an ''underground mining distribution transformer'' as follows:

Underground mining distribution transformer means a medium-voltage dry-type distribution transformer that is built only for installation in an underground mine or inside equipment for use in an underground mine, and that has a nameplate which identifies the transformer as being for this use only. 72 FR 58239.

In that same final rule, DOE also clarified that although it believed these transformers were within its scope of coverage, it was not establishing any energy conservation standards for underground mining transformers. At the time, DOE recognized that these transformers were subject to unique and extreme dimensional constraints which impact their efficiency and performance capabilities. Therefore, DOE established a separate equipment class for mining transformers and stated that it may consider energy conservation standards for such transformers at a later date. Although DOE did not establish energy conservation standards for such transformers, it also did not add underground mining transformers to the list of excluded transformers in the definition of a distribution transformer. DOE retained that it had the authority to cover such equipment if, during a later analysis, it found technologically feasible and economically justified energy conservation standard levels. 72 FR 58197.

In response to the March 2, 2011 preliminary analysis, NEMA recommended that underground mining distribution transformers, including transformers used inside underground tunneling equipment, should be included on the exemption list to clarify that the standards shall not apply to them. (NEMA, No. 13 at p. 10) NPCC and NEEA commented that DOE should remove any confusion about the coverage of underground mining transformers either by setting standards for these units or adding them to the list of excluded transformers. (NPCC/NEEA, No. 11 at p. 9)

FPT urged DOE to exclude mining transformers from minimum efficiency levels because it would result in undue economic hardship for the mining industry and unrealistic design constraints on mining equipment that use such transformers. FPT pointed out that mining transformers make up a small portion of the market and that the total amount of energy they consume is very small compared to the national energy consumption rate. FPT also noted that a mining transformer is more specialized in its design and application than many of the transformers excluded from the definition of distribution transformers under 10 CFR 431.192. (FPT, No. 27 at pp. 8–10)

In view of the above, DOE understands that underground mining transformers are subject to a number of constraints that are not usually concerns for transformers used in general power distribution. Because space is critical in mines, an underground mining transformer may be at a considerable disadvantage in meeting an efficiency standard. Underground mining transformers are further disadvantaged by the fact that they must supply power at several output voltages simultaneously. For this rulemaking, DOE again proposes not to set standards for underground mining transformers, but recognizes the possibility of a loophole. Therefore, DOE continues to leave underground mining transformers off of the list of exempt distribution transformers and reserve a separate equipment class for mining transformers. DOE may set standards in the future if it believes that underground mining transformers are being purchased as a way to circumvent energy conservation standards.

c. Low-Voltage Dry-Type Distribution Transformers

10 CFR 431.192 defines the term ''low-voltage dry-type distribution transformer'' to be a distribution transformer that:

(1) Has an input voltage of 600 volts or less;

(2) Is air-cooled; and

(3) Does not use oil as a coolant.

Because EPACT 2005 prescribed standards for LVDTs, which DOE incorporated into its regulations at 70 FR 60407 (October 18, 2005) (codified at 10 CFR 431.196(a)), LVDTs were not included in the 2007 standards rulemaking. As a result, the settlement agreement following the publication of the 2007 final rule does not impact LVDT standards.

Two interested parties, EEI and SE., requested clarification on whether LVDT distribution transformers would be included in this rulemaking. (EEI, Public Mtg. Tr., No. 34 at p. 56, 27; SE., No. 7 at p. 1) In particular, SE questioned whether Congress would be involved in amending standards for LVDTs. (SE., No. 7 at p. 1) Further, SE expressed concern that there does not appear to be a timeline for the LVDT distribution transformer rulemaking and that one is needed in order to plan potential capital expenditures for any new efficiency levels. (SE., Pub. Mtg. Tr., No. 34 at p. 19)

SE requested that DOE analyze LVDTs in a separate rulemaking from liquid-immersed distribution transformers and MVDTs. It noted that the law defines them separately and that LVDT distribution transformers are used in applications that are different from those of MVDT distribution transformers. SE further noted that LVDT distribution transformers may warrant an expanded scope of coverage and encouraged DOE to reassess the range of kVAs covered, product definitions, exemptions, and loading points. (SE., No. 18 at p. 1) FPT suggested that DOE evaluate LVDT distribution transformers at a later date because this product category is not part of the court order. (FPT, No. 27 at p. 1) Rather, FPT believed that DOE should establish non-mandatory efficiencies for LVDT distribution transformers so that consumers who wish to purchase higher efficiency units can have a point of reference. (FPT, No. 27 at pp. 1–2)

CDA observed that the current efficiency levels for LVDT distribution transformers are at NEMA TP–1 levels and that the 2010 MVDT and liquid-immersed distribution transformer efficiency levels were set at approximately TSL 4. 72 FR 58239–40 (CDA, No. 17 at p. 3). CDA believed that it is appropriate for DOE to evaluate and adjust the minimum efficiency standards for LVDT distribution transformers, wherever cost-effective, to levels that are comparable to the 2010 levels for other [MVDT and liquid-immersed] distribution transformers. (CDA, No. 17 at p. 3) Earthjustice commented that DOE must revisit standards for LVDT distribution transformers as part of EPCA's requirement that standards be reevaluated not later than six years after issuance. Earthjustice noted that, on October 18, 2005, DOE codified the efficiency standards for LVDT distribution transformers that were set forth in EPACT 2005 (70 FR 60407) and that DOE must now publish, by October 18, 2011, either a new proposed standard or a determination that amended standards are not warranted. (Earthjustice, No. 20 at pp. 1–2) In joint comments, the Appliance Standards Awareness Project (ASAP), American Council for an Energy Efficient Economy (ACEEE), and Natural Resources Defense Council (NRDC) agreed with Earthjustice that DOE is obligated under EPCA to review the efficiency standards for liquid-immersed and MVDT distribution transformers and amend the efficiency standards for LVDT distribution transformers if justified. (ASAP/ACEEE/

NRDC, No. 28 at p. 5) HVOLT also believed that DOE should consider LVDT distribution transformers at this time. (HVOLT, No. 33 at p. 2) EEI believed that LVDT distribution transformers could be included in the rulemaking, since they are covered products under the statute and are now under a DOE regulatory purview. (EEI, Pub. Mtg. Tr., No. 34 at pp. 21, 27)

Without regard to whether DOE may have a statutory obligation to review standards for LVDTs, DOE has analyzed all three transformer types and is proposing standards for each in this rulemaking.

Schneider Electric suggested expanding coverage to include sealed units within the range of Design Lines 6 and 7: single-phase 15 and 25 kVA and three-phase 15 kVA distribution transformers. Further, it suggested that an additional three-phase 15 kVA design line, which would include SCOTT–T and OPEN DELTA designs, be created to meet the definition of sealed transformers. (SE., No. 7 at p. 2) DOE is not making this change because the EPACT 2005 definition of a distribution transformer and the definition currently codified at 10 CFR 431.192 both explicitly prohibit the inclusion of such transformers.

d. Negotiating Committee Discussion of Scope

Negotiation participants noted that both network/vault transformers and ''data center'' transformers may experience disproportionate difficulty in achieving higher efficiencies due to certain features that may affect consumer utility. (ABB, Pub. Mtg. Tr., No. 89 at p. 245) The definitions below had been proposed at various points by committee members and DOE seeks comment on both whether it would be appropriate to establish separate equipment classes for any of the following types and, if so, on how such classes might be defined such that it was not financially advantageous for consumers to purchase transformers in either class for general use.

i. A ''network transformer'' is one—

(i) Designed for use in a vault,

(ii) Designed for occasional submerged operation in water,

(iii) Designed to feed a system of variable capacity system of interconnected secondaries, and

(iv) Built per the requirements of IEEE C57.12.40-(year)

ii. A ''vault-type'' transformer is one—

(i) Designed for use in a vault,

(ii) Designed for occasional submerged operation in water, and

(iii) Built per the requirements of IEEE C57.12.23-(year) or IEEE C57.12.24-(year), respectively.

iii. Data center transformer means a three-phase low-voltage dry-type distribution transformer that—

(i) Is designed for use in a data center distribution system and has a nameplate identifying the transformer as being for this use only;

(ii) Has a maximum peak energization current (or in-rush current) less than or equal to four times its rated full load current multiplied by the square root of 2, as measured under the following conditions—

(iii) During energization of the transformer without external devices attached to the transformer that can reduce inrush current;

(iv) The transformer shall be energized at zero +/− 3 degrees voltage crossing of A phase. Five consecutive energization tests shall be performed with peak inrush current magnitudes of all phases recorded in every test. The maximum peak inrush current recorded in any test shall be used;

(v) The previously energized and then de-energized transformer shall be energized from a source having available short circuit current not less than 20 times the rated full load current of the winding connected to the source; and

(vi) The source voltage shall not be less than 5 percent of the rated voltage of the winding energized; and

(vii) Is manufactured with at least two of the following other attributes:

1. Listed by NRTL for a K-factor rating, as defined in UL standard 1561: 2011 Fourth Edition, greater than K–4;

2. Temperature rise less than 130°C with class 220 insulation or temperature rise less than 110°C with class 200 insulation;

3. A secondary winding arrangement that is not delta or wye (star);

4. Copper primary and secondary windings;

5. An electrostatic shield; or

6. Multiple outputs at the same voltage a minimum of 15° apart, which when summed together equal the transformer's input kVA capacity.

2. Equipment Classes

DOE divides covered equipment into classes by: (a) the type of energy used; (b) the capacity; or (c) any performance-related features that affect consumer utility or efficiency. (42 U.S.C. 6295(q)) Different energy conservation standards may apply to different equipment classes (ECs). For the preliminary analysis and for today's NOPR, DOE analyzed the same ten ECs as were used in the previous distribution transformers energy conservation standards rulemaking.[24] These ten equipment classes divided up the population of distribution transformers by:

(a) Type of transformer insulation—liquid-immersed or dry-type,

(b) Number of phases—single or three,

(c) Voltage class—low or medium (for dry-type units only), and

(d) Basic impulse insulation level (for medium-voltage, dry-type units only).

On August 8, 2005, the President signed into law EPACT 2005, which contained a provision establishing energy conservation standards for two of DOE's equipment classes—EC3 (low-voltage, single-phase, dry-type) and EC4 (low-voltage, three-phase, dry-type). With standards thereby established for low-voltage, dry-type distribution transformers, DOE no longer considered these two equipment classes for standards during the previous rulemaking. Since the current rulemaking is considering new standards for distribution transformers, DOE has preliminarily decided to also revisit low-voltage, dry-type distribution transformers to determine if higher efficiency standards are justified. Table IV.1 presents the ten equipment classes within the scope of this rulemaking analysis and provides the kVA range associated with each.

TABLE IV.1—DISTRIBUTION TRANSFORMER EQUIPMENT CLASSES

EC #	Insulation	Voltage	Phase	BIL Rating	kVA Range
1	Liquid-Immersed	Medium	Single		10–833 kVA
2	Liquid-Immersed	Medium	Three		15–2500 kVA
3	Dry-Type	Low	Single		15–333 kVA
4	Dry-Type	Low	Three		15–1000 kVA

[24] See chapter 5 of the TSD for further discussion of equipment classes.

TABLE IV.1—DISTRIBUTION TRANSFORMER EQUIPMENT CLASSES—Continued

EC #	Insulation	Voltage	Phase	BIL Rating	kVA Range
5	Dry-Type	Medium	Single	20–45kV BIL	15–833 kVA
6	Dry-Type	Medium	Three	20–45kV BIL	15–2500 kVA
7	Dry-Type	Medium	Single	46–95kV BIL	15–833 kVA
8	Dry-Type	Medium	Three	46–95kV BIL	15–2500 kVA
9	Dry-Type	Medium	Single	≥ 96kV BIL	75–833 kVA
10	Dry-Type	Medium	Three	≥ 96kV BIL	225–2500 kVA

ABB commented that the currently defined equipment classes do not cover the product scope as defined in 10 CFR part 431.192, which defines medium-voltage as between 601 V and 34.5 kV. Therefore, it recommended changing the equipment classes analyzed, or at least revising the definition in the CFR. (ABB, No. 14 at p. 9)

DOE is uncertain of how its current equipment classes are inconsistent with its published definition of ''medium-voltage dry-type'' and requests further comment on the issue.

a. Less-Flammable Liquid-Immersed Transformers

In the August 2006 standards NOPR, DOE solicited comments about how it should treat distribution transformers filled with an insulating fluid of higher flash point than that of traditional mineral oil. 71 FR 44369 (August 4, 2006). Known as ''less-flammable, liquid-immersed'' (LFLI) transformers, these units are marketed to some applications where a fire would be especially costly and traditionally served by the dry-type market, such as indoor applications.

During preliminary interviews with manufacturers, DOE was informed that LFLI transformers might offer the same utility as dry-type transformers since they were unlikely to catch fire. Manufacturers also stated that LFLI transformers could have a minor efficiency disadvantage relative to traditional liquid-immersed transformers because their more viscous insulating fluid requires more internal ducting to properly circulate.

In the October 2007 final rule, DOE determined that LFLI transformers should be considered in the same equipment class as traditional liquid-immersed transformers. DOE concluded that the design of a transformer (*i.e.,* dry-type or liquid-immersed) was a performance-related feature that affects the energy efficiency of the equipment and, therefore, dry-type and liquid-immersed should be analyzed separately. Furthermore, DOE found that LFLI transformers could meet the same efficiency levels as traditional liquid-immersed units. As a result, DOE did not separately analyze LFLI transformers, but relied on the analysis for the mineral oil liquid-immersed transformers. 72 FR 58202 (October 12, 2007).

For the preliminary analysis, DOE revisited the issue in light of additional research on LFLI transformers and conversations with manufacturers and industry experts. DOE first considered whether LFLI transformers offered the same utility as dry-type equipment, and came to the same conclusion as in the last rulemaking. While LFLI transformers can be used in some applications that historically use dry-type units, there are applications that cannot tolerate a leak or fire. In these applications, customers assign higher utility to a dry-type transformer. Since LFLI transformers can achieve higher efficiencies than comparable dry-type units, combining LFLIs and dry-types into one equipment class may result in standard levels that dry-type units are unable to meet. Therefore, DOE decided not to analyze LFLI transformers in the same equipment classes as dry-type distribution transformers.

Similarly, DOE revisited the issue of whether or not LFLI transformers should be analyzed separately from traditional liquid-immersed units. DOE concluded, once again, that LFLI transformers could achieve any efficiency level that mineral oil units could achieve. Although their insulating fluids are slightly more viscous, this disadvantage has little efficiency impact, and diminishes as efficiency increases and heat dissipation requirements decline. Furthermore, at least one manufacturer suggested that LFLI transformers might be capable of higher efficiencies than mineral oil units because their higher temperature tolerance may allow the unit to be downsized and run hotter than mineral oil units. Additionally, HVOLT agreed with DOE that high temperature liquid-filled transformer insulation systems have a similar space factor to mineral oil systems and should thus have similar losses. (HVOLT, No. 33 at p. 2) For these reasons, DOE believes that LFLI transformers would not be disproportionately affected by standards set in the liquid-immersed equipment classes. Therefore, DOE did not consider LFLI in a separate equipment class for the NOPR analysis.

b. Pole- and Pad-Mounted Liquid-Immersed Distribution Transformers

During negotiations, several parties raised the question of whether pole-mounted, pad-mounted, and possibly other types of liquid-immersed transformers should be considered in separate equipment classes. (ABB, Pub. Mtg. Tr., No. 89 at p. 230) DOE acknowledges that as standards rise, transformer types which previously had similar incremental costs may start to diverge and requests comment on whether and why separate equipment classes are warranted for pole-mounted, pad-mounted, and other types of liquid-immersed distribution transformers.

c. BIL Ratings in Liquid-Immersed Distribution Transformers

During negotiations, several parties raised the question of whether liquid-immersed distribution transformers should have standards set according to BIL rating, as do medium-voltage, dry-type distribution transformers. (ABB, Pub. Mtg. Tr., No. 89 at p. 218) DOE acknowledges that as standards rise, BIL ratings which previously had similar incremental costs may start to diverge and requests comment on whether and why separate equipment classes are warranted for liquid-immersed transformers of different BIL ratings. DOE requests particular comment on how many BIL bins are appropriate to cover the range and where the specific boundaries of those bins should lie.

3. Technology Options

The technology assessment provides information about existing technology options to construct more energy-efficient distribution transformers. There are two main types of losses in transformers: no-load (core) losses and load (winding) losses. Measures taken to reduce one type of loss typically increase the other type of losses. Some examples of technology options to improve efficiency include: (1) Higher-grade electrical core steels, (2) different

conductor types and materials, and (3) adjustments to core and coil configurations.

In consultation with interested parties, DOE identified several technology options and designs for consideration. These technology options are presented in Table IV.2. Further detail on these technology options can be found in chapter 3 of the preliminary TSD.

TABLE IV.2—OPTIONS AND IMPACTS OF INCREASING TRANSFORMER EFFICIENCY

	No-load losses	Load losses	Cost impact
To decrease no-load losses			
Use lower-loss core materials	Lower	No change *	Higher.
Decrease flux density by:			
Increasing core cross-sectional area (CSA)	Lower	Higher	Higher.
Decreasing volts per turn	Lower	Higher	Higher.
Decrease flux path length by decreasing conductor CSA	Lower	Higher	Lower.
Use 120° symmetry in three-phase cores **	Lower	No change	TBD.
To decrease load losses			
Use lower-loss conductor material	No change	Lower	Higher.
Decrease current density by increasing conductor CSA	Higher	Lower	Higher.
Decrease current path length by:			
Decreasing core CSA	Higher	Lower	Lower.
Increasing volts per turn	Higher	Lower	Lower.

* Amorphous core materials would result in higher load losses because flux density drops, requiring a larger core volume.
** Sometimes referred to as a "hexa-transformer" design.

HYDRO-Quebec (IREQ) notified DOE that a new iron-based amorphous alloy ribbon for distribution transformers was developed that has enhanced magnetic properties while remaining ductile after annealing. Further, IREQ noted that a distribution transformer assembly using this technology has been developed. (IREQ, No. 10 at pp. 1–2)

DOE was not able to analyze the described material in the NOPR phase of the rulemaking, but intends to explore it further in the final rule. Two of the challenges facing amorphous steel include availability of the raw material and core manufacturing capacity. DOE seeks comment and analysis about amorphous steels that offer greater raw material availability and greater capacity to manufacture amorphous core steel.

a. Core Deactivation

As noted previously, core deactivation technology employs the concept that a system of smaller transformers can replace a single, larger transformer. For example, three 25 kVA transformers operating in parallel could replace a single 75 kVA transformer.

DOE understands that winding losses are proportionally smaller at lower load factors, but for any given current, a smaller transformer will experience greater winding losses than a larger transformer. As a result, those losses may be more than offset by the smaller transformer's reduced core losses. As loading increases, winding losses become proportionally larger and eventually outweigh the power saved by using the smaller core. At that point, the control unit (which consumes little power itself) switches on an additional transformer, which reduces winding losses at the cost of additional core losses. The control unit knows how efficient each combination of transformers is for any given loading, and is constantly monitoring the unit's power output so that it will use the optimal number of cores. In theory, there is no limit to the number of transformers that may operate in parallel in this sort of system, but cost considerations would imply an optimal number.

DOE spoke with a company that is developing a core deactivation technology. Noting that many dry-type transformers are operated at very low loadings a large percentage of the time (*e.g.,* a building at night), the company seeks to reduce core losses by replacing a single, traditional transformer with two or more smaller units that could be activated and deactivated in response to load demands. In response to load demand changes, a special unit controls the transformers and activates and/or deactivates them in real-time.

Although core deactivation technology has some potential to save energy over a real-world loading cycle, those savings might not be represented in the current DOE test procedure. Presently, the test procedure specifies a single loading point of 50 percent for liquid-immersed and MVDT transformers, and 35 percent for LVDT. The real gain in efficiency for core deactivation technology comes at loading points below the root mean square (RMS) loading specified in the test procedure, where some transformers in the system could be deactivated. At loadings where all transformers are activated, which may be the case at the test procedure loading, the combined core and coil losses of the system of transformers could exceed those of a single, larger transformer. This would result in a lower efficiency for the system of transformers compared to the single, larger transformer.

In response to the preliminary analysis, NEMA commented that core deactivation technology is unrelated to the design of a transformer, but rather is related to the system of which it is a part. Therefore, NEMA commented, it is outside the scope of this rulemaking, because all transformers must comply with DOE regulations. (NEMA, No. 13 at p. 3) ABB agreed that core deactivation technology is not related to the design of a transformer, but rather related to the design of the system in which the transformer is deployed. ABB noted that core deactivation technology input voltage source is disconnected from the transformer terminals, similar to a switchgear component and, as such, is not an integral element of the distribution transformer any more than a disconnect switch or circuit breaker. ABB commented that DOE does not consider other systems for energy efficiency, but if it is to look at core deactivation technology, perhaps it should also consider technologies that maintain the load power factor closer to unity. (ABB, No. 14 at pp. 3, 6)

Howard Industries (HI) commented that core deactivation technology does not currently exist for liquid-immersed transformers, and has not been evaluated for feasibility. In its opinion, core deactivation technology could cause several issues, such as flicker problems and in-rush current/surge protection. Additionally, HI believed that there are patent issues for this technology. For these reasons, HI recommended that DOE not consider core deactivation technology for liquid-immersed transformers. (HI, No. 23 at pp. 4, 11) Edison Electric Institute (EEI) agreed that core deactivation should not be considered for liquid-immersed transformers, which face significant load diversity because multiple buildings and/or homes can be served by a single transformer. EEI commented that, due to this load diversity, it is highly unlikely that core deactivation would provide energy savings for liquid-immersed transformers. (EEI, No. 29 at pp. 4–5)

HVOLT commented that core deactivation is not feasible. Based on HVOLT calculations, core deactivation only achieves fewer losses than a single, full-sized unit when loaded below 15 percent. Core deactivation also requires considerations for impedance, regulation, switching devices, and transformer reliability, making the technology unattractive for efficiency regulations. (HVOLT, No. 33 at pp. 2–3) Furthermore, HVOLT performed loading analyses of core deactivation technology and found that the only loading point where it beats traditional transformers was at zero percent. (HVOLT, Pub. Mtg. Tr., No. 34 at p. 60) However, Warner Power indicated that HVOLT's analysis was based on assumed numbers rather than actual designs and stated that core deactivation technology is more efficient than HVOLT's analysis indicated. (WP, Pub. Mtg. Tr., No. 34 at p. 62) Warner Power also commented that the 0.75 scaling factor did not accurately capture the efficiency of the smaller component transformers in a core deactivation system and asserted that it would prefer to see a linear scaling factor (WP, No. 30 at pp. 6–7, 11). Furthermore, Warner Power pointed out that core deactivation technology is better suited for many small loads than for large, discrete loads. The multiple, smaller loads create a smooth load profile throughout the day without sudden large demands. (WP, No. 30 at p. 7) Warner Power also commented that, for core deactivation technology, it is important to note that the secondary and tertiary component transformers do not typically power on at 33 percent and 66 percent load. Rather, the switching point is where the system operates with the lowest total losses and is specific to the transformer design. (WP, No. 30 at p. 7) Finally, Warner Power stated that core deactivation technology allows a transformer to achieve higher efficiency at low loading values. WP hypothesized that average power consumption will go down in buildings and transformer core losses will start to become more significant, thus making core deactivation technology more desirable. (WP, Pub. Mtg. Tr., No. 34 at p. 42)

NRECA and the NRECA Transmission & Distribution Engineering Committee (T&DEC) commented that core deactivation technology would be extremely difficult to successfully implement from an economical viewpoint. (NRECA/T&DEC, No. 31 and 36 at p. 2) Southern Company (SC) agreed and noted that core deactivation technology does not seem practical or cost-effective because it would use more materials than a single transformer, which would increase the weight and cost of the unit. SC further noted that the increased weight could be problematic for pole-mounted transformers. (SC, No. 22 at p. 3)

FPT commented that DOE should not consider core deactivation in the efficiency standard rulemaking at this time because it is only advantageous in certain situations with low loading requirements, and thus only represents a small portion of the market. (FPT, No. 27 at p. 3) Rather, FPT suggested that DOE encourage users to de-energize the LVDT from the primary switch/breaker. FPT also noted that the technology would face challenges with medium-voltage transformers, such as pre-strikes, re-strikes, ferroresonance, and reducing the life of the primary circuit sectionalizing device. (FPT, No. 27 at p. 3)

Berman Economics was interested to know if DOE would also be looking at the potential differences in stress and wear on the transformer as one is activating and deactivating the core deactivation transformer. (BE, Pub. Mtg. Tr, No. 34 at p. 62)

DOE appreciates all of the comments from interested parties regarding core deactivation technology. DOE understands that core deactivation technology is most easily implemented in LVDT distribution transformer designs. Implementing core deactivation technology in medium-voltage distribution transformers is possible, but poses difficulties for switching the primary and secondary connections. For the NOPR, DOE has not fully quantified these difficulties because it did not directly analyze core deactivation technology, although DOE believes it may be possible to evaluate the technology using its existing transformer designs. DOE also acknowledges that operating a core deactivation bank of transformers instead of a single unit may save energy and lower LCC for certain consumers. At present, however, DOE is adopting the position that each of the constituent transformers must comply with the energy conservation standards under the scope of the rulemaking.

b. Symmetric Core

DOE understands that several companies worldwide are commercially producing three-phase transformers with symmetric cores—those in which each leg of the transformer is identically connected to the other two. The symmetric core uses a continuously wound core with 120-degree radial symmetry, resulting in a triangularly shaped core when viewed from above. In a traditional core, the center leg is magnetically distinguishable from the other two because it has a shorter average flux path to each. In a symmetric core, however, no leg is magnetically distinguishable from the other two.

One manufacturer of symmetric core transformers cited several advantages to the symmetric core design. These include reduced weight, volume, no-load losses, noise, vibration, stray magnetic fields, inrush current, and power in the third harmonic. Thus far, DOE has seen limited cost and efficiency data for only a few symmetric core units from testing done by manufacturers. DOE has not seen any designs for symmetric core units modeled in a software program.

DOE understands that, because of zero-sequence fluxes associated with wye-wye connected transformers, symmetric core designs are best suited to delta-delta or delta-wye connections. While traditional cores can circumvent the problem of zero-sequence fluxes by introducing a fourth or fifth unwound leg, core symmetry makes extra legs inherently impractical. Another way to mitigate zero-sequence fluxes comes in the form of a tertiary winding, which is delta-connected and has no external connections. This winding is dormant when the transformer's load is balanced across its phases. Although symmetric core designs may, in theory, be made tolerant of zero-sequence fluxes by employing this method, this would come at extra cost and complexity.

Using this tertiary winding, DOE believes that symmetric core designs can service nearly all distribution

transformer applications in the United States. Most dry-type transformers have a delta connection and would not require a tertiary winding. Similarly, most liquid-immersed transformers serving the industrial sector have a delta connection. These market segments could use the symmetric core design without any modification for a tertiary winding. However, in the United States most utility-operated distribution transformers are wye-wye connected. These transformers would require the tertiary winding in a symmetric core design.

DOE understands that symmetric core designs are more challenging to manufacture and require specialized equipment that is currently uncommon in the industry. However, DOE did not find a reasonable basis to screen this technology option out of the analysis, and is aware of at least one manufacturer producing dry-type symmetric core designs commercially in the United States.

For the preliminary analysis, DOE lacked the data necessary to perform a thorough engineering analysis of symmetric core designs. To generate a cost-efficiency relationship for symmetric core design transformers, DOE made several assumptions. DOE adjusted its traditional core design models to simulate the cost and efficiency of a comparable symmetric core design. To do this, DOE reduced core losses and core weight while increasing labor costs to approximate the symmetric core designs. These adjustments were based on data received from manufacturers, published literature, and through conversations with manufacturers. Table IV.3 indicates the range of potential adjustments for each variable that DOE considered and the mean value used in the analysis.

TABLE IV.3—SYMMETRIC CORE DESIGN ADJUSTMENTS

Range	[Percentage changes]		
	Core losses (W)	Core weight (lbs)	Labor hours
Minimum	−0.0	−12.0	+10.0
Mean	−15.5	−17.5	+55.0
Maximum	−25.0	−25.0	+100.0

DOE applied the adjustments to each of the traditional three-phase transformer designs to develop a cost-efficiency relationship for symmetric core technology. DOE did not model a tertiary winding for the wye-wye connected liquid-immersed design lines (DLs). Based on its research, DOE believes that the losses associated with the tertiary winding may offset the benefits of the symmetric core design and that the tertiary winding will add cost to the design. Therefore, DOE modeled symmetric core designs for the three-phase, liquid-immersed design lines without a tertiary winding to examine the impact of symmetric core technology on the subgroup of applications that do not require the tertiary winding.

NPCC and NEEA jointly commented that DOE should revise its assumptions about costs and limitations of symmetric core designs in accordance with information provided by manufacturers of these technologies. (NPCC/NEEA, No. 11 at p. 2) Furthermore, NPCC and NEEA noted that DOE should revise its analysis for symmetric core designs to account for labor costs that mirror those of conventional core designs. NPCC and NEEA recommended that DOE request additional data from manufacturers that are producing this technology. (NPCC/NEEA, No. 11 at pp. 4, 6)

Hex Tec (HEX) commented that DOE should consider a symmetric core design using amorphous core steel in its evaluation. (HEX, No. 35 at p. 1) It noted that there are several variations of the symmetric core design being made around the world and that licenses are available. Furthermore, it commented that amorphous metal suppliers are emerging in India and China, concluding that there are no barriers to adopting symmetric core technology with an amorphous core. (HEX, No. 35 at p. 1) Hex Tec pointed out that amorphous units up to 3 MVA in size have been produced using Evans distributed gap core construction, but are labor intensive and difficult to produce, and concluded that amorphous designs are easier to make using a symmetric core. (HEX, No. 35 at p. 1) Finally, Hex Tec submitted a letter written by the Vice President of Research & Development at Metglas that indicates that symmetric core units using amorphous steel of 15 to 100 kVA demonstrated core losses of 0.13 Watts/lb at an induction of 1.2 T. The letter also noted that audible sound levels were low. (HEX, No. 35 at p. 14)

Hammond (HPS) commented that its analytical and prototype work indicated that symmetric core designs do not experience a core loss advantage but do have higher manufacturing costs. (HPS, No. 3 at p. 2) However, Hex Tec commented that it builds symmetric cores with labor costs and material savings that are comparable to those incurred by conventional construction. (HEX, Pub. Mtg. Tr., No. 34 at p. 25) Hex Tec noted that the equipment to produce symmetric wound cores is significantly less expensive than flat stack steel equipment and that the labor production times are lower. (HEX, Pub. Mtg. Tr., No. 34 at p. 52) Hex Tec added that labor requirements, both TAC time and process times, are lower for symmetric core designs than for conventional designs. (HEX, No. 35 at p. 2)

Hex Tec submitted data showing that the weight of three-phase, 75 kVA LVDT symmetric core designs ranged from 390 to 600 pounds between 98.6 and 99.2 percent efficiency. These weights are lower than the weights of comparably efficient designs using conventional cores. (HEX, No. 35 at p. 7) Hex Tec also submitted data comparing the efficiency, dimensions, core and coil material content, and cost of several conventional designs for three-phase, 75 kVA LVDT units to those of otherwise identical symmetric core designs. (HEX, No. 35 at p. 8) Hex Tec noted it took the same amount of labor time as a major conventional-design manufacturer to produce a three-phase 75 kVA LVDT rated at CSL3,[25] and that it was able to do so with lower material costs. (HEX, Pub. Mtg. Tr., No. 34 at p. 110) Hex Tec also submitted data showing comparisons between the weight, losses, and costs of conventional core designs and symmetric core designs at 1000

[25] "Candidate Standard Levels" (CSLs) are analogous to the Efficiency Levels (ELs) DOE utilizes together in the NOPR to create Trial Standard Levels (TSLs). This particular commenter refers to CSL3 from the 2007 rulemaking, not the present one.

kVA and 2000 kVA for MVDTs. (HEX, No. 35 at pp. 9–10)

Warner Power pointed out that recent improvements in the manufacturing process for symmetric core designs, leveraged by increasing volumes, will bring labor costs down to approximately 10 percent below labor costs for conventional cores. (WP, No. 30 at p. 3) Warner Power commented that symmetric cores use a wound core with no scrap and approximately 15 percent lower weight than that of conventional cores. (WP, No. 30 at p. 3) Warner felt that DOE's symmetric core analysis contained some significant errors that would generate the wrong output, and that the manufacturing cost estimates for symmetric cores were overstated. (WP, No. 30 at p. 9; WP Pub. Mtg. Tr., No. 34 at p. 111)

Power Partners commented that DOE should not set a standard based on symmetric core designs because they are not common in the industry and could place an unreasonable burden on smaller manufacturers who would be unable to invest in the equipment necessary for the technology. (PP, No. 19 at p. 2) NEMA agreed, commenting that symmetric core is in its infancy and has low penetration in the industry and should not be introduced into the regulation until it has been proven in the marketplace. (NEMA, No. 13 at p. 3) FPT commented that symmetric core technology should not be used as the basis for increasing efficiency levels and noted that, while the technology may be advantageous in some areas, it may present problems with larger transformers. (FPT, No. 27 at pp. 3–4, 13) Warner Power disagreed and stated that symmetric core designs and core deactivation technology should be included in the scope of DOE's analysis, recommending several symmetric core and core deactivation design option combinations. (WP, No. 30 at p. 9)

NEEA reiterated that symmetric core manufacturers have stated that there should not be any patent concerns for the technology, since it is not yet patented. (NEEA, No. 11 at p. 4; NEEA, Pub. Mtg. Tr., No. 34 at p. 261) Howard Industries disagreed and commented that DOE should not consider symmetric core technology because it is patented by Hexaformer AB of Sweden, which would result in increased licensing costs. (HI, No. 23 at pp. 3–4, 6–7, 11) Furthermore, HI noted that no manufacturers in North America currently produce the design for liquid-immersed units. (HI, No. 23 at pp. 3–4, 6–7, 11) HI also pointed out that Hexaformer AB does not produce units higher than 200 kVA and 24 kV, whereas most utilities require larger kVA sizes and 35 kV. (HI, No. 23 at pp. 3–4, 6–7, 11) Finally, Howard commented that all efficiency improvements for symmetric core liquid-immersed designs are theoretical at this point. (HI, No. 23 at pp. 3–4, 6–7, 11)

Southern Company commented that symmetric core technology is not feasible for utility applications because they require wye-wye connections, while symmetric cores have a delta connection. SC noted that, while a tertiary winding may enable the symmetric core design to be connected in the system, SC has had trouble in the past with tertiary windings and has discontinued purchasing transformers that use them. (SC, No. 22 at p. 2) Howard Industries and HVOLT also noted that most utility transformers are wye-wye connected and would need a delta tertiary winding to use symmetric core technology, which would drive down efficiency while increasing costs. (HI, No. 23 at pp. 3–4, 6–7, 11; HVOLT, Pub. Mtg. Tr., No. 34 at p. 50; HVOLT, Pub. Mtg. Tr., No. 34 at p. 50)

DOE attempts to consider all designs that are technologically feasible and practicable to manufacture and believes that symmetric core designs can meet these criteria. However, DOE has not been able to obtain or produce sufficient data to modify its analysis of symmetric cores since the preliminary analysis. Therefore, although not screened out, DOE has not considered symmetric core designs for its NOPR analyses. DOE welcomes comment and submission of engineering data that would be useful in analyzing symmetric core designs in the final rule.

c. Intellectual Property

In setting standards, DOE seeks to analyze the efficiency potentials of commercially available technologies and working prototypes as well as the availability of those technologies to the market at-large. If certain market participants own intellectual property that enable them to reach efficiencies that other participants practically cannot, amended standards may reduce the competitiveness of the market.

In the case of distribution transformers, stakeholders have raised potential intellectual property concerns surrounding both symmetric core technology and amorphous metals in particular. DOE currently understands that symmetric core technology itself is not proprietary, but that one of the more commonly employed methods of production is the property of the Swedish company Hexaformer AB. However, Hexaformer AB's method is not the only one capable of producing symmetric cores. Moreover, Hexaformer AB and other companies owning intellectual property related to the manufacture of symmetric core designs have demonstrated an eagerness to license such technology to others that are using it to build symmetric core transformers commercially today.

Warner Power commented that the well-known symmetric core design (Hexaformers) is subject to worldwide patents for the core winding and assembly process, but multiple licenses have been authorized and the IP owner has indicated it will entertain additional licenses. The basic design concept is not patented, and several other manufacturers make symmetric cores, so patents should not be a limiting factor. (WP, No. 30 at pp. 3–4)

EEI noted that, if certain higher-efficiency designs are covered by patents, then the number of manufacturers may decrease, which would increase transformer prices. It recommended that DOE discuss any relevant patents and indicate whether they will be in place after 2016. (EEI, No. 29 at p. 10)

DOE understands that symmetric core technology may ultimately offer a lower-cost path to higher efficiency, at least in certain applications, and that few symmetric cores are produced in the United States. However, DOE notes again that it has been unable to secure data that are sufficiently robust for use as the basis for an energy conservation standard, but encourages interested parties to submit data that would assist in DOE's analysis of symmetric core technology.

B. Screening Analysis

DOE uses the following four screening criteria to determine which design options are suitable for further consideration in a standards rulemaking:

1. *Technological feasibility.* Technologies incorporated in commercial products or in working prototypes will be considered to be technologically feasible.

2. *Practicability to manufacture, install, and service.* If mass production of a technology in commercial products and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standards, then that technology will be considered practicable to manufacture, install, and service.

3. *Impacts on product utility to consumers.* If a technology is determined to have significant adverse impact on the utility of the product to significant subgroups of consumers, or

result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

4. *Safety of technologies.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further. (10 CFR part 430, subpart C, appendix A)

In the preliminary analysis, DOE identified the technologies for improving distribution transformer efficiency that were under consideration. DOE developed this initial list of design options from the technologies identified in the technology assessment. Then DOE reviewed the list to determine if the design options are practicable to manufacture, install, and service; would adversely affect equipment utility or equipment availability; or would have adverse impacts on health and safety. In the engineering analysis, DOE only considered those design options that satisfied the four screening criteria. The design options that DOE did not consider because they were screened out are summarized in Table IV.4.

TABLE IV.4—DESIGN OPTIONS SCREENED OUT OF THE ANALYSIS

Design option excluded	Eliminating screening criteria
Silver as a Conductor Material	Practicability to manufacture, install, and service.
High-Temperature Superconductors	Technological feasibility; Practicability to manufacture, install, and service.
Amorphous Core Material in Stacked Core Configuration	Technological feasibility; Practicability to manufacture, install, and service.
Carbon Composite Materials for Heat Removal	Technological feasibility.
High-Temperature Insulating Material	Technological feasibility.
Solid-State (Power Electronics) Technology	Technological feasibility; Practicability to manufacture, install, and service.
Nanotechnology Composites	Technological feasibility.

Chapter 4 of the TSD discusses each of these screened-out design options in more detail. The chapter also includes a list of emerging technologies that could impact future distribution transformer manufacturing costs.

Multiple interested parties commented that they agreed with the technology options screened out of the analysis by DOE. (EEI, No. 29 at p. 5; HI, No. 23 at p. 5; NPCC/NEEA, No. 11 at p. 3) Metglas concurred that using amorphous metals in a stack core configuration is technically infeasible. (Metglas, Pub. Mtg. Tr., No. 34 at p. 66) Howard Industries also recommended that DOE screen out symmetric core designs and core deactivation technology from their analysis based on proprietary concerns. (HI, No. 23 at p. 5)

DOE appreciates the feedback and remains interested in advances that would allow a currently screened technology to be considered as a design option. As for symmetric core designs, DOE has not screened this technology out because it is aware that manufacturers around the world are building and selling such transformers. However, without additional information regarding the technology, DOE has been unable to fully evaluate this as a design option.

1. Nanotechnology Composites

DOE understands that the nanotechnology field is actively researching ways to produce bulk material with desirable features on a molecular scale. Some of these materials may have high resistivity, high permeability, or other properties that make them attractive for use in electrical transformers. DOE knows of no current commercial efforts to employ these materials in distribution transformers and no prototype designs using this technology, but welcomes comment on such technology and its implications for the future of the industry.

NEMA and ABB Transformers both commented that, because nanotechnology composite technology is not commercially available in the U.S., manufacturers cannot discuss it publicly. (NEMA, No. 13 at p. 4; ABB, No. 14 at p. 7) Howard Industries, Inc. was unaware of any nanotechnology composite technology for distribution transformers. (HI, No. 23 at p. 4)

DOE appreciates confirmatory feedback, and does not propose to consider nanotechnology composites in the current rulemaking.

C. Engineering Analysis

The engineering analysis develops cost-efficiency relationships for the equipment that are the subject of a rulemaking by estimating manufacturer costs of achieving increased efficiency levels. DOE uses manufacturing costs to determine retail prices for use in the LCC analysis and MIA. In general, the engineering analysis estimates the efficiency improvement potential of individual design options or combinations of design options that pass the four criteria in the screening analysis. The engineering analysis also determines the maximum technologically feasible energy efficiency level.

DOE must consider those distribution transformers that are designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines to be technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Therefore, an important role of the engineering analysis is to identify the maximum technologically feasible efficiency level. The maximum technologically feasible level is one that can be reached by adding efficiency improvements and/or design options, both commercially feasible and in prototypes, to the baseline units. DOE believes that the design options comprising the maximum technologically feasible level must have been physically demonstrated in a prototype form to be considered technologically feasible.

In general, DOE can use three methodologies to generate the manufacturing costs needed for the engineering analysis. These methods are:

(1) The design-option approach—reporting the incremental costs of adding design options to a baseline model;

(2) The efficiency-level approach—reporting relative costs of achieving improvements in energy efficiency; and

(3) The reverse engineering or cost assessment approach—involving a ''bottom up'' manufacturing cost assessment based on a detailed bill of

materials derived from transformer teardowns.

DOE's analysis for the distribution transformers rulemaking is based on the design-option approach, in which design software is used to assess the cost-efficiency relationship between various design option combinations. This is the same approach that was taken in the previous rulemaking for distribution transformers.

1. Engineering Analysis Methodology

When developing its engineering analysis for distribution transformers, DOE divided the covered equipment into equipment classes. As discussed, distribution transformers are classified by insulation type (liquid-immersed or dry-type), number of phases (single or three), primary voltage (low-voltage or medium-voltage for dry-types) and basic impulse insulation level (BIL) rating (for dry-types). Using these transformer design characteristics, DOE developed ten equipment classes. Within each of these equipment classes, DOE further classified distribution transformers by their kilovolt-ampere (kVA) rating. These kVA ratings are essentially size categories, indicating the power handling capacity of the transformers. For DOE's rulemaking there are over 100 kVA ratings across all ten equipment classes.

DOE recognized that it would be impractical to conduct a detailed engineering analysis on all kVA ratings, so it sought to develop an approach that simplified the analysis while retaining reasonable levels of accuracy. DOE consulted with industry representatives and transformer design engineers to develop an understanding of the construction principles for distribution transformers. It found that many of the units share similar designs and construction methods. Thus, DOE simplified the analysis by creating engineering design lines (DLs), which group kVA ratings based on similar principles of design and construction. The DLs subdivide the equipment classes, to improve the accuracy of the engineering analysis. These DLs differentiate the transformers by insulation type (liquid-immersed or dry-type), number of phases (single or three), and primary insulation levels for medium-voltage, dry-type (three different BIL levels).

After developing its DLs, DOE then selected one representative unit from each DL for study in the engineering analysis, greatly reducing the number of units for direct analysis. For each representative unit, DOE generated hundreds of unique designs by contracting with Optimized Program Services, Inc. (OPS), a software company specializing in transformer design since 1969. The OPS software used three primary inputs that it received from DOE, (1) a design option combination, which included core steel grade, primary and secondary conductor material, and core configuration; (2) a loss valuation combination; and (3) material prices. For each representative unit, DOE examined anywhere from 8 to 16 design option combinations and for each design option combination, the OPS software generated 518 designs based off of unique loss valuation combinations. These loss valuation combinations are known in industry as A and B evaluation combinations and represent a customer's present value of future losses in a transformer core and winding, respectively. For each design option combination and A and B combination, the OPS software generated an optimized transformer design based on the material prices that were also part of the inputs. Consequently, DOE obtained thousands of transformer designs for each representative unit. The performance of these designs ranged in efficiency from a baseline level, equivalent to the current distribution transformer energy conservation standards, to a theoretical max-tech efficiency level.

After generating each design, DOE used the outputs of the OPS software to help create a manufacturer selling price (MSP). The material cost outputs of the OPS software, along with labor estimates were marked up for scrap factors, factory overhead, shipping, and non-production costs to generate an MSP for each design. Thus, DOE obtained a cost versus efficiency relationship for each representative unit. Finally, after DOE had generated the MSPs versus efficiency relationship for each representative unit, it extrapolated the results the other, unanalyzed, kVA ratings within that same engineering design line.

2. Representative Units

For the preliminary analysis, DOE analyzed 13 DLs that cover the range of equipment classes within the distribution transformer market. Within each DL, DOE selected a representative unit to analyze in the engineering analysis. A representative unit is meant to be an idealized distribution transformer typical of those used in high volume applications. Table IV.5 outlines the design lines and representative units selected for each equipment class.

TABLE IV.5—ENGINEERING DESIGN LINES AND REPRESENTATIVE UNITS FOR ANALYSIS

EC *	DL	Type of distribution transformer	kVA Range	Representative unit for this engineering design line
1	1	Liquid-immersed, single-phase, rectangular tank	10–167	50 kVA, 65 °C, single-phase, 60Hz, 14400V primary, 240/120V secondary, rectangular tank.
	2	Liquid-immersed, single-phase, round tank	10–167	25 kVA, 65 °C, single-phase, 60Hz, 14400V primary, 120/240V secondary, round tank.
	3	Liquid-immersed, single-phase	250–833	500 kVA, 65 °C, single-phase, 60Hz, 14400V primary, 277V secondary.
2	4	Liquid-immersed, three-phase	15–500	150 kVA, 65 °C, three-phase, 60Hz, 12470Y/7200V primary, 208Y/120V secondary.
	5	Liquid-immersed, three-phase	750–2500	1500 kVA, 65 °C, three-phase, 60Hz, 24940GrdY/14400V primary, 480Y/277V secondary.
3	6	Dry-type, low-voltage, single-phase	15–333	25 kVA, 150 °C, single-phase, 60Hz, 480V primary, 120/240V secondary, 10kV BIL.
4	7	Dry-type, low-voltage, three-phase	15–150	75 kVA, 150 °C, three-phase, 60Hz, 480V primary, 208Y/120V secondary, 10kV BIL.
	8	Dry-type, low-voltage, three-phase	225–1000	300 kVA, 150 °C, three-phase, 60Hz, 480V Delta primary, 208Y/120V secondary, 10kV BIL.

TABLE IV.5—ENGINEERING DESIGN LINES AND REPRESENTATIVE UNITS FOR ANALYSIS—Continued

EC*	DL	Type of distribution transformer	kVA Range	Representative unit for this engineering design line
6	9	Dry-type, medium-voltage, three-phase, 20–45kV BIL	15–500	300 kVA, 150 °C, three-phase, 60Hz, 4160V Delta primary, 480Y/277V secondary, 45kV BIL.
	10	Dry-type, medium-voltage, three-phase, 20–45kV BIL	750–2500	1500 kVA, 150 °C, three-phase, 60Hz, 4160V primary, 480Y/277V secondary, 45kV BIL.
8	11	Dry-type, medium-voltage, three-phase, 46–95kV BIL	15–500	300 kVA, 150 °C, three-phase, 60Hz, 12470V primary, 480Y/277V secondary, 95kV BIL.
	12	Dry-type, medium-voltage, three-phase, 46–95kV BIL	750–2500	1500 kVA, 150 °C, three-phase, 60Hz, 12470V primary, 480Y/277V secondary, 95kV BIL.
10	13	Dry-type, medium-voltage, three-phase, 96–150kV BIL	225–2500	2000 kVA, 150 °C, three-phase, 60Hz, 12470V primary, 480Y/277V secondary, 125kV BIL.

*EC = Equipment Class

ABB commented that the definition of design lines for equipment class 4 leaves an uncovered kVA range from 150 kVA to 225 kVA, and recommended that DOE extend the scope of DL 8 to be 150–1000 kVA. (ABB, No. 14 at p. 12) In view of the ABB comment, DOE would like to clarify that DL 7 covers kVA ratings up through 150 kVA, and that DL 8 covers kVA ratings beginning with 225 kVA. DOE does not specify any ratings in between 150 and 225 kVA because it is not aware of any standard ratings between these two ratings. Furthermore, 10 CFR 431.196(a) states that low-voltage dry-type distribution transformers with kVA ratings not appearing in the table [of designated kVA ratings and efficiencies] shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating. Therefore, DOE has not altered the design lines for low-voltage dry-type transformers.

Additionally, ABB had several recommendations for DOE regarding representative units. First, ABB commented that DOE correctly noted in the 2007 rulemaking that BIL does not impact efficiency for liquid-immersed transformers as significantly as it impacts MVDT units. However, since DOE does not separate out the liquid-immersed efficiency levels by BIL and performs its analysis on the 15 kV voltage class, it understates the energy savings for units with a higher BIL and makes it more difficult for these units to meet the efficiency standard. ABB recommended that DOE analyze representative units for liquid-immersed design lines in the 200 kV BIL class, such as a 34500 V (200 BIL) unit. (ABB, No. 14 at pp. 7–8) For the liquid-immersed design lines, ABB recommended that DOE consider a 150 kVA (200 BIL) single-phase representative unit and a 30 kVA (200 BIL) three-phase representative unit to better represent the range of BILs covered and to provide for more accurate scaling. (ABB, No. 14 at p. 11) To improve the scaling within the LVDT equipment classes, ABB also recommended that DOE consider a 100 kVA (10 BIL) single-phase representative unit and a 25 kVA (10 BIL) three-phase unit. (ABB, No. 14 at p. 12) For DL13, ABB recommended that DOE consider a representative unit in the 200 kV BIL class, such as 34500 V (200 BIL). For EC 10, ABB recommended that DOE consider a representative unit at 200 kV BIL in order to analyze a unit at the upper limit of the BIL rating for the equipment class. (ABB, No. 14 at p. 10)

ABB also disagreed with the assumption that single-phase MVDT units have one-third the losses of three-phase MVDT units and commented that DOE should directly analyze single-phase MVDT units. It further noted that this assumption was not made for liquid-immersed or LVDT units. (ABB, No. 14 at pp. 5, 10) ABB suggested that DOE analyze several single-phase MVDT representative units including the following: 50 kVA (45 BIL), 300 kVA (45 BIL), 50 kVA (95 BIL), and 300 kVA (95 BIL). ABB also recommended that DOE analyze 150 kVA (200 BIL) and 500 kVA (200 BIL) units if DOE does not change the definition of EC 9, or 50 kVA (200 BIL) and 300 kVA (200 BIL) if it does change the definition of EC 9 to align with 10 CFR part 431.192. (ABB, No. 14 at p. 10) To provide for better scaling, ABB recommended that DOE consider the following representative units for three-phase MVDT: 30 kVA (45 BIL), and 30 kVA (95 BIL). ABB also recommended that DOE analyze 500 kVA (200 BIL) units if it does not change the definition of EC10, or 30 kVA (200 BIL) and 300 kVA (200 BIL) units if it does change the definition of EC9 to align with 10 CFR 431.192. (ABB, No. 14 at p. 10)

NEMA commented that it found the representative unit for DL 5, DL 13, and the units for the single-phase liquid-immersed design lines all to be satisfactory. (NEMA, No. 13 at p. 4) However, NEMA stated that DOE should consider at least one representative unit for each of the three equipment classes for single-phase medium-voltage dry-type transformers. (NEMA, No. 13 at p. 5) NEMA also suggested an additional representative unit for each of the three LVDT design lines. (NEMA, No. 13 at p. 5) For DL1, NEMA commented that DOE should examine an additional representative unit of 167 kVA, 65 degrees Celsius, single-phase, 60 Hz, 14400V primary, 240/120 secondary, rectangular tank. (NEMA, No. 13 at p. 4) For DL2, NEMA felt that DOE should examine an additional representative unit of 100 kVA, 65 degrees Celsius, single-phase, 60 Hz, 14400V primary, 120/240 secondary, round tank. (NEMA, No. 13 at p. 5)

Howard Industries also recommended several representative units for DOE to consider. Howard noted that it is not optimum to require the same efficiency for the entire range of BIL ratings for liquid-immersed distribution transformers. It suggested that DOE examine representative units with higher BIL ratings for the single-phase liquid-immersed design lines, such as 19920 V (150 kV BIL), as well as for dual primary voltage ratings, such as 7200 × 19920 V primary voltages. (HI, No. 23 at p. 5) Also, Howard Industries recommended that DOE consider a representative unit for DL5 with a 150 kV BIL and a dual voltage primary, such as 12470GRDY/7200 x 24500GRDY/19920. (HI, No. 23 p. 5) Further, it commented that large three-phase liquid-immersed transformers with low-voltage ratings, such as 208Y/120, should be examined because these

designs are difficult to manufacture even under the present efficiency standards. (HI, No. 23 at p. 5) Finally, Howard Industries noted that DOE may need to consider additional representative units in order to perform accurate scaling for pole type transformers. It recommended that DOE consider kVA ranges of 10–50 kVA, 75–167 kVA, and 250–833 kVA for accurate scaling of pole-mount units. (HI, No. 23 at p. 8)

Power Partners noted that it could not determine the BIL rating for design line 1. (PP, Pub. Mtg. Tr., No. 34 at p. 71) Howard Industries and Power Partners both supported using 125 BIL 14400 volt designs for design lines 1–3. (PP, Pub. Mtg. Tr., No. 34 at p. 72; HI, Pub. Mtg. Tr., No. 34 at p. 72) NRECA and T&DEC commented that the 14.4 kV primary voltage selected for DOE's analysis of design lines 1 through 3 is appropriate in that it represents a large portion of the market. However, they commented that DOE should explain how other voltages above and below this level would be impacted. (NRECA/T&DEC, No. 31 and 36 at p. 3) In DL 3, PP suggested analyzing the smallest and largest transformers in addition to the midpoint. (PP, Pub. Mtg. Tr., No. 34 at p. 136) Power Partners would support the use of 14400 volt 125 BIL coil voltage as the means of analysis for all liquid-filled design lines. (PP, Pub. Mtg. Tr., No. 34 at p. 83) PP would also support 14400 volts in the design lines for single-phase liquid-immersed transformers. (PP, Pub. Mtg. Tr., No. 34 at p. 71) It commented that DOE should increase the voltage of its liquid-immersed representative units to 34500GY/19920 (150 BIL) or, at a minimum, consider 14400/24940Y (125 BIL). Power Partners noted that it is more difficult to meet the efficiency standards at these higher voltages, and suggested detailed specifications for revision to the representative units for DL2 and DL3. (PP, No. 19 at pp. 2–3)

In regards to the representative unit for DL13, FPT commented that dry-type transformers with primaries rated for 125 kV BIL are more commonly rated at 24900V and 150 kV BIL units typically have 34500 volt primaries. (FPT, No. 27 at p. 14) Hex Tec stated that, for DL 13, ''MVDT three-phase units, 2000 kVA 12470, 480/277 with a 95 kV BIL is the workhorse of that market.'' (HEX, Pub. Mtg. Tr., No. 34 at p. 81) For 96–150 kV BIL, FPT believed that 24900 or 24940 volts would be more appropriate for the primary voltage of the representative unit in DL13. (FPT, Pub. Mtg. Tr., No. 34 at p. 81) Hammond commented that the representative unit for DL13 should have a primary of 24940 V Delta for the 125 kV BIL. (HPS, No. 3 at p. 3)

Schneider Electric (SE) suggested adding another design line for low-voltage three-phase units at 15 kVA. SE felt that this would be beneficial to the national impact analysis because that design line is readily available in the marketplace. (SE, Pub. Mtg. Tr., No. 34 at p. 83) SE also commented that DOE should analyze two representative units for each of the three existing LVDT design lines. It recommended that DOE split the analyzed kVA ranges into two ranges and analyze a representative unit in each. (SE, No. 18 at p. 7)

Central Moloney commented that the 25 kVA pole unit is shown as 240/120 but that the standard is 120/240. (CM, Pub. Mtg. Tr., No. 34 at p. 72)

Overall, NPCC and NEEA commented that the representative units selected should accurately represent products that are being sold in the marketplace, and recommended that DOE adjust its analysis based on feedback from manufacturers. (NPCC/NEEA, No. 11 at p. 5)

In view of the above comments, DOE slightly modified its representative units for the NOPR analysis. For the NOPR, DOE analyzed the same 13 representative units as in the preliminary analysis, but also added a design line, and therefore representative unit, by splitting the former design line 13 into two new design lines, 13A and 13B. This new representative unit is shown in Table IV.6. The representative units selected by DOE were chosen because they comprise high volume segments of the market for their respective design lines and also provide, in DOE's view, a reasonable basis for scaling to the unanalyzed kVA ratings. DOE chooses certain designs to analyze as representative of a particular design line or design lines because it is impractical to analyze all possible designs in the scope of coverage for this rulemaking. DOE will consider extending its direct analysis further to substantiate the efficiency standard proposed for the final rule and will publish sensitivity results to help assess the accuracy of its analysis in the areas not directly analyzed. DOE also notes that as a part of the negotiations process, DOE has worked directly with multiple interested parties to develop a new scaling methodology for the NOPR that addresses some of the aforementioned interested party concerns regarding scaling.

TABLE IV.6—ENGINEERING DESIGN LINES (DLS) AND REPRESENTATIVE UNITS FOR ANALYSIS

EC *	DL	Type of distribution transformer	kVA Range	Representative unit for this engineering design line
1	1	Liquid-immersed, single-phase, rectangular tank	10–167	50 kVA, 65 °C, single-phase, 60Hz, 14400V primary, 240/120V secondary, rectangular tank, 95kV BIL.
	2	Liquid-immersed, single-phase, round tank	10–167	25 kVA, 65 °C, single-phase, 60Hz, 14400V primary, 120/240V secondary, round tank, 125 kV BIL.
	3	Liquid-immersed, single-phase	250–833	500 kVA, 65 °C, single-phase, 60Hz, 14400V primary, 277V secondary, 150kV BIL.
2	4	Liquid-immersed, three-phase	15–500	150 kVA, 65 °C, three-phase, 60Hz, 12470Y/7200V primary, 208Y/120V secondary, 95kV BIL.
	5	Liquid-immersed, three-phase	750–2500	1500 kVA, 65 °C, three-phase, 60Hz, 24940GrdY/14400V primary, 480Y/277V secondary, 125 kV BIL.
3	6	Dry-type, low-voltage, single-phase	15–333	25 kVA, 150 °C, single-phase, 60Hz, 480V primary, 120/240V secondary, 10kV BIL.
4	7	Dry-type, low-voltage, three-phase	15–150	75 kVA, 150 °C, three-phase, 60Hz, 480V primary, 208Y/120V secondary, 10kV BIL.
	8	Dry-type, low-voltage, three-phase	225–1000	300 kVA, 150 °C, three-phase, 60Hz, 480V Delta primary, 208Y/120V secondary, 10kV BIL.
6	9	Dry-type, medium-voltage, three-phase, 20–45kV BIL.	15–500	300 kVA, 150 °C, three-phase, 60Hz, 4160V Delta primary, 480Y/277V secondary, 45kV BIL.

TABLE IV.6—ENGINEERING DESIGN LINES (DLS) AND REPRESENTATIVE UNITS FOR ANALYSIS—Continued

EC *	DL	Type of distribution transformer	kVA Range	Representative unit for this engineering design line
	10	Dry-type, medium-voltage, three-phase, 20–45kV BIL.	750–2500	1500 kVA, 150 °C, three-phase, 60Hz, 4160V primary, 480Y/277V secondary, 45kV BIL.
8	11	Dry-type, medium-voltage, three-phase, 46–95kV BIL.	15–500	300 kVA, 150 °C, three-phase, 60Hz, 12470V primary, 480Y/277V secondary, 95kV BIL.
	12	Dry-type, medium-voltage, three-phase, 46–95kV BIL.	750–2500	1500 kVA, 150 °C, three-phase, 60Hz, 12470V primary, 480Y/277V secondary, 95kV BIL.
10	13A	Dry-type, medium-voltage, three-phase, 96–150kV BIL.	75–833	300 kVA, 150 °C, three-phase, 60Hz, 24940V primary, 480Y/277V secondary, 125kV BIL.
	13B	Dry-type, medium-voltage, three-phase, 96–150kV BIL.	225–2500	2000 kVA, 150 °C, three-phase, 60Hz, 24940V primary, 480Y/277V secondary, 125kV BIL.

* EC means equipment class (see Chapter 3 of the TSD). DOE did not select any representative units from the single-phase, medium-voltage equipment classes (EC5, EC7 and EC9), but calculated the analytical results for EC5, EC7, and EC9 based on the results for their three-phase counterparts.

3. Design Option Combinations

There are many different combinations of design options that could be considered for each representative unit DOE analyzes. While DOE cannot consider all the possible combinations of design options, DOE attempts to select design option combinations that are common in the industry while also spanning the range of possible efficiencies for a given DL. For each design option combination chosen, DOE evaluates 518 designs based on different A and B factor [26] combinations. For the engineering analysis, DOE reused many of the design option combinations that were analyzed in the previous rulemaking for distribution transformers.

For the preliminary analysis, DOE considered a design option combination that uses an amorphous steel core for each of the dry-type design lines, whereas DOE's previous rulemaking did not consider amorphous steel designs for the dry-type design lines. Instead, DOE had considered H–0 domain refined (H–0 DR) steel as the maximum-technologically feasible design. However, DOE is aware that amorphous steel designs are now used in dry-type distribution transformers. Therefore, DOE considered amorphous steel designs for each of the dry-type transformer design lines in the preliminary analysis.

During preliminary interviews with manufacturers, DOE received comment that it should consider additional design option combinations using aluminum for the primary conductor rather than copper. While manufacturers commented that copper is still used for the primary conductor in many distribution transformers, they noted that aluminum has become relatively more common. This is due to the relative prices of copper and aluminum. In recent years, copper has become even more expensive compared to aluminum.

DOE also noted that certain design lines were lacking a design to bridge the efficiency values between the lowest efficiency amorphous designs and the next highest efficiency designs. In an effort to close that gap for the preliminary analysis, DOE evaluated ZDMH and M2 core steel as the highest efficiency designs below amorphous for the liquid-immersed design lines. Similarly, DOE evaluated H–0 DR and M3 core steel as the highest efficiency designs below amorphous for dry-type design lines.

The joint comments submitted by NPCC and NEEA as well as those submitted by ASAP, ACEEE, and NRDC indicated that DOE should include these supplementary designs in the reference case analysis for the NOPR. (NPCC/NEEA, No. 11 at pp. 5–6; ASAP/ACEEE/NRDC, No. 28 at p. 3) NPCC and NEEA added that DOE should consider all potential design options in its analyses to ensure that all the cost-effective means of reaching higher efficiencies have been considered. (NPCC/NEEA, No. 11 at p. 4) For example, several stakeholders recommended that DOE examine wound core designs for its analysis of dry-type distribution transformers. (NPCC/NEEA, No. 11 at pp. 2, 4–5; EMS, Pub. Mtg. Tr., No. 34 at p. 86; PG&E, Pub. Mtg. Tr., No. 34 at p. 87; ASAP, Pub. Mtg. Tr., No. 34 at p. 88) Joint comments from ASAP, ACEEE, and NRDC and PG&E and SCE noted that DOE should consider wound core designs for its low-voltage dry-type design lines, where high sales volume could better justify the additional equipment and tooling costs of switching to wound core production. (ASAP/ACEEE/NRDC, No. 28 at p. 3; PG&E/SCE, No. 32 at p. 1; PG&E, Pub. Mtg. Tr., No. 34 at p. 261) Lastly, HVOLT noted that wound cores in kVA sizes beyond 300 kVA will tend to buzz, but Hex Tec clarified that the wound cores used in symmetric core designs above 300 kVA do not induce any additional audible sound. (HVOLT, Pub. Mtg. Tr., No. 34 at p. 51; Hex Tec, Pub. Mtg. Tr., No. 34 at p. 51)

DOE clarifies that although it was not done so in the preliminary analysis, DOE has incorporated its supplementary designs into the reference case for the NOPR analysis. Additionally, DOE aims to consider the most popular design option combinations, and the design option combinations that yield the greatest improvements in efficiency. While DOE is unable to consider all potential design option combinations, it does consider multiple designs for each representative unit and has considered additional design options in its NOPR analysis based on stakeholder comments.

As for wound core designs, DOE did consider analyzing them for all of its dry-type representative units that are 300 kVA or less in the NOPR. However, based on limited availability in the United States, DOE did not believe that it was feasible to include these designs in their final engineering results. For similar availability reasons, DOE chose to exclude its wound core ZDMH and M3 designs from its low-voltage dry-type analysis. Based on how uncommon these designs are in the current market, DOE believes that it would be unrealistic to include them in engineering curves without major adjustments.

DOE did not consider wound core designs for DLs 10, 12, and 13B because they are 1500 kVA and larger. DOE understands that conventional wound core designs in these large kVA ratings will emit an audible ''buzzing'' noise, and will experience an efficiency penalty that grows with kVA rating such

[26] A and B factors correspond to loss valuation and are used by DOE to generate distribution transformers with a broad range of performance and design characteristics.

that stacked core is more attractive. DOE notes, however, that it does consider a wound core amorphous design in each of the dry-type design lines.

DOE also received interested party feedback indicating that DOE should consider step-lap miter designs for its dry-type design lines. (NPCC/NEEA, No. 11 at p. 4; Metglas, Pub. Mtg. Tr., No. 34 at p. 91) In the preliminary analysis, DOE had only analyzed fully-mitered designs for the dry-type design lines, but stakeholders noted that step-lap miter designs could potentially yield greater efficiencies than the fully-mitered designs. However, during the negotiations process, interested parties clarified that step-lap mitering may not be cost-effective in the smaller dry-type designs because the smaller average steel piece size gives rise to a larger destruction factor, and larger losses, than would be predicted by modeling. (ONYX, Pub. Mtg. Tr., No. 30 at p. 43) Stakeholders agreed that it would not be appropriate to consider step-lap mitering for design line 6, a 25 kVA unit, to reflect its scarcity or absence from the market. Therefore, in the NOPR DOE analyzed step-lap miter designs for each of the dry-type design lines except design line 6.

In the preliminary analysis, DOE considered several premium grade core steels. It examined H0–DR, ZDMH, and SA1 amorphous core steels in its designs, as well as the standard M-grade steels. DOE requested comment on whether there were other premium grade core steels that should be considered in the analysis. ABB commented that ZDMH, H0–DR, and SA1 amorphous steels cover all the high performance core steel grades that are currently commercially available. (ABB, No. 14 at p. 13) Therefore, DOE continued to analyze them for the NOPR and did not consider any additional premium core steels.

DOE did opt to add two design option combinations that incorporate M-grade steels that have become popular choices at the current standard levels. For all medium-voltage, dry-type design lines (9–13B), DOE added a design option combination of an M4 step-lap mitered core with aluminum primary and secondary windings. For design line 8, DOE added a design option combination of an M6 fully mitered core with aluminum primary and secondary windings. DOE understands both combinations to be prevalent baseline options in the present transformer market.

For the NOPR analysis, DOE also made the decision to remove certain high flux density designs from DL7 in order to be consistent with designs submitted by manufacturers.[27] There is a variety of reasons that manufacturers would choose to limit flux density (*e.g.,* vibration, noise). Further detail on this change can be found in chapter 5 of the TSD.

4. A and B Loss Value Inputs

As discussed, one of the primary inputs to the OPS software is an A and B combination for customer loss evaluation. In the preliminary analysis, DOE generated each transformer design in the engineering analysis based upon an optimized lowest total owning cost evaluation for a given combination of A and B values. Again, the A and B values represent the present value of future core and coil losses, respectively and DOE generated designs for over 500 different A and B value combinations for each of the design option combinations considered in the analysis.

In response to the preliminary analysis, Berman Economics commented that designing a transformer to total owning cost based on A and B factors will result in a higher first cost transformer than a design that aims to minimize first cost for a given efficiency level. (BE, No. 16 at p. 6) Additionally, Berman Economics noted that many utilities and customers do not specify an A and B value when ordering transformers, and will just ask for the lowest first cost design. (BE, Pub. Mtg. Tr., No. 34 at p. 123)

DOE notes that the designs created in the engineering analysis span a range of costs and efficiencies for each design option combination considered in the analysis. This range of costs and efficiencies is determined by the range of A and B factors used to generate the designs. Although DOE does not generate a design for every possible A and B combination, because there are infinite variations, DOE believes that its 500-plus combinations have created a sufficiently broad design space. By using so many A and B factors, DOE is confident that it produces the lowest first cost design for a given efficiency level and also the lowest total owning cost design. Furthermore, although all distribution transformer customers do not purchase based on total owning cost, the A and B combination is still a useful tool that allows DOE to generate a large number of designs across a broad range of efficiencies and costs for a particular design line. Finally, OPS noted at the public meeting that its design software requires A and B values as inputs. (OPS, Pub. Mtg. Tr., No. 34 at p. 123) For all of these reasons, DOE continued to use A and B factors in the NOPR to generate the range of designs for the engineering analysis.

5. Materials Prices

In distribution transformers, the primary materials costs come from electrical steel used for the core and the aluminum or copper conductor used for the primary and secondary winding. As these are commodities whose prices frequently fluctuate throughout a year and over time, DOE attempted to account for these fluctuations by examining prices over multiple years. For the preliminary analysis, DOE conducted the engineering analysis analyzing materials price information over a five-year time period from 2006–2010, all in constant 2010$. Whereas DOE used a five-year average price in the previous rulemaking for distribution transformers, for the preliminary analysis in this rulemaking, DOE selected one year from its five-year time frame as its reference case, namely 2010. Additionally, DOE considered high and low materials price sensitivities from that same five-year time frame, 2008 and 2006 respectively.

DOE decided to use current (2010) materials prices in its analysis for the preliminary analysis because of feedback from manufacturers during interviews. Manufacturers noted the difficulty in choosing a price that accurately projects future materials prices due to the recent variability in these prices. Manufacturers also commented that the previous five years had seen steep increases in materials prices through 2008, after which prices declined as a result of the global economic recession. Further detail on these factors can be found in appendix 3A. Due to the variability in materials prices over this five-year timeframe, manufacturers did not believe a five-year average price would be the best indicator, and recommended using the current materials prices.

To estimate its materials prices, DOE spoke with manufacturers, suppliers, and industry experts to determine the prices paid for each raw material used in a distribution transformer in each of the five years between 2006 and 2010. While prices fluctuate during the year and can vary from manufacturer to manufacturer depending on a number of variables, such as the purchase quantity, DOE attempted to develop an average materials price for the year based on the price a medium to large manufacturer would pay.

[27] During the negotiations process, DOE's subcontractor, Navigant Consulting, Inc. (Navigant), participated in a bidirectional exchange of engineering data in an effort to validate the OPS designs generated for the engineering analysis.

In general, stakeholders agreed with DOE's approach for analyzing materials prices in the preliminary analysis. Power Partners and EEI agreed with DOE's approach of using 2010 materials prices in the reference case and examining alternate years' materials prices as sensitivities. (PP, Pub. Mtg. Tr., No. 34 at p. 100; EEI, Pub. Mtg. Tr., No. 34 at p. 100) Howard Industries noted that 2010 prices are reasonable for the reference case as long as DOE uses the 2010 prices with any additional design runs. (HI, No. 23 at p. 6) Similarly, ABB agreed with DOE's approach to use a single reference year, such as 2010, for the materials prices, and noted that materials prices are reaching an all-time high in 2011. (ABB, No. 14 at p. 14) Finally, Power Partners commented that DOE did a reasonable job grouping the various wire sizes into ranges. (PP, Pub. Mtg. Tr., No. 34 at p. 118)

Conversely, Southern Company and FPT commented that DOE's approach for generating reference case materials prices could be improved. Southern Company noted that 2010 materials prices may be lower than future materials prices once the economy improves and there is a limited availability of supplies coupled with increased demand. (SC, No. 22 at p. 4) FPT also commented that DOE should consider whether there will be an adequate supply of higher grade core steels at the price points identified in the analysis, noting that smaller manufacturers are likely not able to purchase materials at the same price points as larger manufacturers and may have to pay more, especially if there is an increase in demand resulting from amended standards. (FPT, No. 27 at p. 2)

With the onset of the negotiations, DOE was presented with an opportunity to implement a 2011 materials price case based on data it had gathered before and during the negotiation proceedings. Relative to the 2010 case, the 2011 prices were lower for all steels, particularly M2 and lower grade steels.

For the NOPR, DOE continued to use the 2010 materials prices as a reference case scenario, but added a second, 2011 price case. DOE presents both cases as recent examples of how the steel market fluctuates and uses both to derive economic results. It also considered high and low price scenarios based on the 2008 and 2006 materials prices, respectively, but adjusted the prices in each of these years to consider greater diversity in materials prices. For the high price scenario, DOE increased the 2008 prices by 25 percent, and for the low price scenario, DOE decreased the 2006 prices by 25 percent as additional sensitivity analyses. DOE believes that these price sensitivities accurately account for any pricing discrepancies experienced by smaller or larger manufacturers, and adequately consider potential price fluctuations.

NPCC and NEEA jointly commented that DOE should forecast future materials prices based on spot commodities future prices. (NPCC/NEEA, No. 11 at pp. 6–7) Similarly, FPT commented that 2010 materials prices may not be a good indication of future steel prices, which will likely increase. (FPT, No. 27 at p. 12) On the other hand, Berman Economics commented that the pricing of core steels over the past few years has declined, even though standard levels have shifted the market to higher core steel grades. As a result, Berman Economics stated that core steel production could be expected to expand in light of new energy conservation standards without any significant impacts on the materials prices. (BE, No. 16 at p. 10)

For the engineering analysis, DOE did not attempt to forecast future materials prices. DOE continued to use the 2010 materials price in the reference case scenario, added a 2011 reference scenario, and also considered high and low sensitivities to account for any potential fluctuations in materials prices. The LCC and NIA consider a scenario, however, in which transformer prices increase in the future based on increasing materials prices, among other variables. Further detail on this scenario can be found in chapter 8 of the TSD.

Several stakeholders commented that the average materials prices DOE calculated for the 2006–2010 timeframe, particularly for year 2010, were not accurate. NEMA recommended that DOE gather additional information from manufacturers on this topic. (NEMA, No. 13 at p. 6) FPT commented that DOE's price of $2.38 per pound for amorphous steel appeared to be low, and questioned whether the price had been verified with suppliers of amorphous material. Joint comments submitted by ASAP, ACEEE, and NRDC stated that DOE's materials prices were too high compared to market prices in 2010. (ASAP/ACEEE/NRDC, No. 28 at p. 2) HVOLT commented that DOE's prices for copper and aluminum were understated, noting that current copper prices are around $6.50. (HVOLT, No. 33 at p. 1; HVOLT, Pub. Mtg. Tr., No. 34 at p. 117) Power Partners commented that the prices for aluminum wire were too high and that prices for copper wire were too low, suggesting that DOE derive its conductor prices by adding a processing cost to the COMEX or London Metal Exchange (LME) indices. (PP, Pub. Mtg. Tr., No. 34 at pp. 100, 118; PP, No. 19 at p. 3) To this point, Hex Tec added that the fabrication cost varies by wire size. (HEX, Pub. Mtg. Tr., No. 34 at p. 118)

For the NOPR, DOE reviewed its materials prices during interviews with manufacturers and industry experts and revised its materials prices for copper and aluminum conductors. As suggested by Power Partners, DOE derived these prices by adding a processing cost increment to the underlying index price. DOE determined the current 2011 index price from the LME and COMEX. These indices only had current 2011 values available, so DOE used the producer price index for copper and aluminum to convert the 2011 index price into prices for the time period of 2006–2010. DOE then applied a unique processing cost adder to the index price for each of its conductor groupings. To derive the adder price, DOE compared the difference in the LME index price to the 2011 price paid by manufacturers, and applied this difference to the index price in each year. DOE inquired with many manufacturers, both large and small, to derive these prices. Further detail can be found in chapter 5 of the TSD.

DOE reviewed core steel prices with manufacturers and industry experts and found them to be accurate within the range of prices paid by manufacturers in 2010. However, based on feedback in negotiations, DOE adjusted steel prices for M4 grade steels and lower grade steels.

As for FPT's concern regarding prefabricated amorphous cores, estimated at $2.38 per pound in 2010, DOE notes that this price was derived from speaking with several North American suppliers of prefabricated amorphous cores, and aligns with marked-up price estimates for raw amorphous ribbon. Therefore, so DOE continued to use this price estimate in the NOPR for the 2010 price scenario.

6. Markups

DOE derived the manufacturer's selling price for each design in the engineering analysis by considering the full range of production costs and non-production costs. The full production cost is a combination of direct labor, direct materials, and overhead. The overhead contributing to full production cost includes indirect labor, indirect material, maintenance, depreciation, taxes, and insurance related to company assets. Non-production cost includes the cost of selling, general and administrative items (market research, advertising, sales representatives, and

logistics), research and development (R&D), interest payments, warranty and risk provisions, shipping, and profit factor. Because profit factor is included in the non-production cost, the sum of production and non-production costs is an estimate of the manufacturer's selling price. DOE utilized various markups to arrive at the total cost for each component of the distribution transformer. These markups are outlined in greater detail in chapter 5 of the TSD.

NPCC and NEEA jointly commented that DOE should vet the non-production markup with manufacturers to ensure that it is accurate. (NPCC/NEEA, No. 11 at p. 6) Berman Economics added that manufacturers do not price their units in the same way that DOE did in its analysis; rather, they look at their costs and the market and generate a competitive price accordingly. Therefore, Berman Economics suggested that DOE only look at the material and labor costs and refrain from including the other markups. (BE, Pub. Mtg. Tr., No. 34 at p. 96)

DOE interviewed manufacturers of distribution transformers and related products to learn about markups, among other topics, and observed a number of very different practices. In absence of a consensus, DOE attempted to adapt manufacturer feedback to inform its current modeling methodology while acknowledging that it may not reflect the exact methodology of many manufacturers. DOE feels that it is necessary to model markups, however, since there are costs other than material and labor that affect final manufacturer selling price. The following sections describe various facets of DOE's markups for distribution transformers.

a. Factory Overhead

DOE uses a factory overhead markup to account for all indirect costs associated with production, indirect materials and energy use (*e.g.,* annealing furnaces), taxes, and insurance. In the preliminary analysis, DOE derived the cost for factory overhead by applying a 12.5 percent markup to direct material production costs.

Several stakeholders commented that factory overhead is more commonly estimated as a markup on labor costs, not material costs. (NPCC/NEEA, No. 11 at pp. 2, 6; ASAP/ACEEE/NRDC, No. 28 at p. 2; PP, Pub. Mtg. Tr., No. 34 at p. 102; HEX, Pub. Mtg. Tr., No. 34 at p. 103) ABB commented that factory overhead should not be tied to direct material costs, but rather to the design option being produced and the volume being produced, using a fixed quantity for factory overhead based on the design option. (ABB, No. 14 at pp. 14–15)

DOE appreciates the comments and considered other approaches for calculating factory overhead for the NOPR. However, DOE was unable to determine an alternate methodology that could accurately estimate factory overhead costs. In the absence of further information for how to calculate factory overhead based on labor costs or design options, DOE continued to use its approach based on the material production costs. DOE notes that factory overhead costs are not applied to the material production cost component, but are simply estimated based on the production costs.

In the preliminary analysis, DOE applied the same factory overhead markup to its prefabricated amorphous cores as it did to its other design options where the manufacturer was assumed to produce the core. Since the factory overhead markup accounts for indirect production costs that are not easily tied to a particular design, it was applied consistently across all design types. DOE did not find that there was sufficient substantiation to conclude that manufacturers would apply a reduced overhead markup for a design with a prefabricated core.

Hammond Power Systems and Howard Industries agreed with DOE's decision to apply the same factory overhead to prefabricated amorphous cores. (HPS, No. 3 at p. 4; HI, No. 23 at p. 6) On the other hand, NPCC and NEEA jointly commented that factory overhead should not be applied to prefabricated cores because the markup would already be included in the selling price of the prefabricated core. (NPCC/NEEA, No. 11 at p. 7) ABB, however, noted that even though manufacturers may outsource various components of the transformer manufacturing, such as enclosures, cores, or coils, DOE should assume a vertical manufacturing process in which the manufacturer produces all components in-house. (ABB, No. 14 at pp. 14–15) NEMA commented that DOE should gather additional data from individual manufacturers on the topic of factory overhead. (NEMA, No. 13 at p. 6)

For the NOPR analysis, DOE continued to apply the same factory overhead markup to prefabricated amorphous cores as to other cores built in-house. This approach is consistent with the suggestion of the manufacturers, and DOE notes that factory overhead for a given design applies to many items aside from the core production. Furthermore, since DOE already accounts for decreased labor hours in its designs using prefabricated amorphous cores, but also considers an increased core price based on a prefabricated core rather than the raw amorphous material, it already accounts for the tradeoffs associated with developing the core in-house versus outsourced.

During negotiations, DOE learned from both manufacturers of transformers and manufacturers of transformer cores that mitering and, to a greater extent, step-lap mitering, result in a per-pound cost of finished cores higher than butt-lapped units built to the same specifications. (ONYX, Pub. Mtg. Tr., No. 30 at p. 43) This helps to account for the fact that butt-lapping is common at baseline efficiencies in today's low-voltage market.

In response, DOE opted to increase mitering costs for both low- and medium-voltage dry-type designs. In the medium-voltage case, DOE incorporated a processing cost of 10 cents per core pound for step-lap mitering. In the low-voltage case, DOE incorporated a processing cost of 10 cents per core pound for ordinary mitering and 20 cents per core pound for step-lap mitering. DOE used different per pound adders for step-lap mitering for medium-voltage and low-voltage units because the base case design option for each is different. For low-voltage units, DOE modeled butt-lapped designs at the baseline efficiency level whereas ordinary mitering was modeled at the baseline for medium-voltage. Therefore, using a step-lap mitered core represents a more significant change in technology for low-voltage dry-type transformers and thus the higher markup.

b. Labor Costs

In the preliminary analysis, DOE accounted for additional labor and material costs for large (≥1500 kVA), dry-type designs using amorphous metal. The additional labor costs accounted for special handling considerations, since the amorphous material is very thin and can be difficult to work with in such a large core. They also accounted for extra bracing that is necessary for large, wound core, dry-type designs in order to prevent short circuit problems.

NPCC, NEEA, and NEMA commented that DOE should consult individual manufacturers to gather information about the additional costs DOE associates with large amorphous designs. (NPCC/NEEA, No. 11 at p. 6; NEMA, No. 13 at p. 6) NPCC and NEEA added that DOE should consider a range of assumed incremental costs starting at zero when analyzing amorphous core designs. (NPCC/NEEA, No. 11 at p. 7)

Several manufacturers also commented on the issue of additional costs for large amorphous designs. Howard Industries commented that these designs face similar cost increases as those that DOE identified for large dry-type designs using an amorphous core. It noted that typically these liquid-immersed designs require an additional 10 hours of handling, added cost for the epoxy and catalyst used in sealing the amorphous cores, and additional bracing depending on the weight of the core/coil assembly. Howard Industries estimated this cost as an extra $100 to $200 for additional materials and hardware. (HI, No. 23 at p. 6)

ABB commented that if DOE accounts for additional labor and material costs for large amorphous designs, then it should apply the same logic to all design options, and also noted that large liquid-immersed amorphous designs would have the same costs as the dry-type designs. ABB noted that large wound cores would have more labor and hardware compared to small wound cores, and that stacked cores will have more labor than wound cores. Finally, ABB noted that stacked M2 would require more labor than stacked M6 steel. (ABB, No. 14 at p. 15) Power Partners commented that DOE needed to add in additional assembly time for liquid-immersed transformers using amorphous cores. (PP, Pub. Mtg. Tr., No. 34 at p. 102) Finally, Hex Tec noted that certain core construction methods (*e.g.,* symmetric core designs) make the handling of amorphous material much easier, which can eliminate the need for extra handling. (HEX, Pub. Mtg. Tr., No. 34 at p. 103)

During negotiations, Federal Pacific commented that it believed DOE was underestimating labor hours for core assembly for all low- and medium-voltage dry-type design lines.

In response to interested party feedback, DOE applied an incremental increase in core assembly time to amorphous designs in the liquid-immersed design line 5 (1500 kVA). This additional core assembly time of 10 hours is consistent with DOE's treatment of amorphous designs in large, dry-type design lines. However, DOE did not account for additional hardware costs for bracing in the liquid-immersed designs using amorphous cores. This is because DOE already accounts for bracing costs for all of its liquid-immersed designs, which use wound cores, in its analysis. DOE determined that it adequately accounted for these bracing costs in the smaller kVA sizes using amorphous designs, and thus only made the change to the large (≥1500 kVA) design lines. DOE did not model varying incremental cost increases starting with zero for large amorphous designs, as NEEA and NPCC suggested, noting that the impact of these incremental costs are oftentimes very minor for large, expensive transformer designs. In response to Federal Pacific's comment and data from other manufacturers of medium- and low-voltage transformers, DOE explored its estimates of labor hours and increased those relating to core assembly for design lines 6–13B. Details on the specific values of the adjustments can be found in chapter 5 of the TSD.

Finally, in response to ABB's comment that DOE should apply different labor and material costs to each design option in the analysis, DOE notes that it already does account for costs differently based on the design options used. Labor requirements are, for example, determined in part based on the grade of core steel, the core weight, and the number of turns in the winding. Similarly, material costs are determined specific to each material input based on each design's specifications.

c. Shipping Costs

During its interviews with manufacturers in the preliminary analysis, DOE was informed that manufacturers often pay shipping (freight) costs to the customer. Manufacturers indicated that they absorb the cost of shipping the units to the customer and that they include these costs in their total cost structure when calculating profit markups. As such, manufacturers apply a profit markup to their shipping costs just like any other cost of their production process. Manufacturers indicated that these costs typically amount to anywhere from four to eight percent of revenue.

In the previous rulemaking for distribution transformers, DOE accounted for shipping costs exclusively in the LCC analysis. These costs were paid by the customer, and thus did not include a markup from the manufacturer based on its profit factor. In the preliminary analysis, DOE included shipping costs in the manufacturer's cost structure, which is then marked up by a profit factor. These shipping costs account for delivering the units to the customer, who may then bear additional shipping costs to deliver the units to the final end-use location. As such, DOE accounts for the first leg of shipping costs in the engineering analysis and then any subsequent shipping costs in the LCC analysis. The shipping cost was estimated to be $0.22 per pound of the transformer's total weight and typically amounts to four to eight percent of the total MSP. DOE derived the $0.22 per pound by relying on the shipping costs developed in its previous rulemaking on distribution transformers, when DOE collected a sample of shipping quotations for transporting transformers. In that rulemaking, DOE estimated shipping costs as $0.20 per pound based on an average shipping distance of 1,000 miles. For the preliminary analysis, DOE updated the cost to $0.22 per pound based on the price index for freight shipping between 2007 and 2010. Additional detail on these shipping costs can be found in chapter 5 and chapter 8 of the TSD.

DOE received several comments about the methodology for deriving shipping costs. NEMA commented that DOE should gather additional information from manufacturers. (NEMA, No. 13 at p. 6) Federal Pacific commented that weight increases as transformers become more efficient, and noted that shipping costs would thus increase if standards were amended. (FPT, No. 27 at pp. 4–5) Several stakeholders commented that DOE should consider the cost of fuel in its shipping cost calculation, particularly since it has increased in recent years. (NRECA/T&DEC, No. 31 and 36 at p. 3; EEI, Pub. Mtg. Tr., No. 34 at p. 95; EEI, No. 29 at p. 5) NPCC and NEEA jointly commented that shipping costs will increase with time as diesel fuel prices rise. (NPCC/NEEA, No. 11 at p. 7)

For the NOPR, DOE revised its shipping cost estimate to account for the rising cost of diesel fuel. DOE adjusted its previous shipping cost of $0.20 (in 2006 dollars) from the previous rulemaking to a 2011 cost based on the producer price index for No. 2 diesel fuel. This yielded a shipping cost of $0.28 per pound. DOE also retained its shipping cost calculation based on the weight of the transformer to differentiate the shipping costs between lighter and heavier, typically more efficient, designs.

In the preliminary analysis, DOE applied a non-production markup to all cost components, including shipping costs, to derive the MSP. DOE based this cost treatment on the assumption that manufacturers would mark up the shipping costs when calculating their final selling price. The resulting shipping costs were, as stated, approximately four to eight percent of total MSP.

During the public meeting, ASAP asked if DOE had found market data that indicated that shipping costs should be included in the sale price. (ASAP, Pub. Mtg. Tr., No. 34 at p. 102) HPS

commented that DOE's assumption that shipping costs are typically four to eight percent of MSP is accurate, but noted that it does not typically mark up shipping costs. (HPS, No. 3 at p. 5) ABB commented that shipping costs are recognized as an expense to manufacturers, but that they do not impact the profit markup of the manufacturer because transformers must be priced based on the market. Rather, shipping costs reduce the profit of the sale. Additionally, ABB noted that shipping costs are typically only two to four percent of total transformer costs. (ABB, No. 14 at p. 15) Similarly, Federal Pacific commented that manufacturers bear the cost of shipping, but they do not mark up the shipping cost in their profit markup or other markups. (FPT, No. 27 at p. 17) Conversely, Howard Industries agreed with DOE's approach in which markups were applied to the cost of shipping. Howard Industries added that it agreed that shipping costs are typically four to eight percent of revenues. (HI, No. 23 at p. 6)

Based on the comments received and DOE's additional research into the treatment of shipping costs through manufacturer interviews, DOE has preliminarily decided to retain the shipping costs in its calculation of MSP, but not to apply any markups to the shipping cost component. Therefore, shipping costs were added separately into the MSP calculation, but not included in the cost basis for the non-production markup. The resulting shipping costs were still in line with the estimate of four to eight percent of MSP for all the dry-type design lines. For the liquid-immersed design lines, the shipping costs ranged from six to twelve percent of MSP and averaged about nine percent of MSP.

7. Baseline Efficiency and Efficiency Levels

DOE analyzed designs over a range of efficiency values for each representative unit. Within the efficiency range, DOE developed designs that approximate a continuous function of efficiency. However, DOE only analyzes incremental impacts of increased efficiency by comparing discrete efficiency benchmarks to a baseline efficiency level. The baseline efficiency level evaluated for each representative unit is the existing energy conservation standard level of efficiency for distribution transformers established either in DOE's previous rulemaking or by EPACT 2005. The incrementally higher efficiency benchmarks are referred to as ''efficiency levels'' (ELs) and, along with MSP values, characterize the cost-efficiency relationship above the baseline. These ELs are ultimately used by DOE if it decides to amend the existing energy conservation standards.

For the NOPR, DOE considered several criteria when setting ELs. First, DOE harmonized the efficiency values across single-phase transformers and the per-phase kVA equivalent three-phase transformers. For example, a 50 kVA single-phase transformer would have the same efficiency requirement as a 150 kVA three-phase transformer. This approach is consistent with DOE's methodology from the previous rulemaking and from the preliminary analysis of this rulemaking. Therefore, DOE selected equivalent ELs for several of the representative units that have equivalent per-phase kVA ratings.

Second, DOE selected equally spaced ELs by dividing the entire efficiency range into five to seven evenly spaced increments. The number of increments depended on the size of the efficiency range. This allowed DOE to examine impacts based on an appropriate resolution of efficiency for each representative unit.

Finally, DOE adjusted the position of some of the equally spaced ELs and examined additional ELs. These minor adjustments to the equally spaced ELs allowed DOE to consider important efficiency values based on the results of the software designs. For example, DOE adjusted some ELs slightly up or down in efficiency to consider the maximum efficiency potential of non-amorphous design options. Other ELs were added to consider important benchmark efficiencies, such as the NEMA Premium efficiency levels for LVDT distribution transformers. Last, DOE considered additional ELs to characterize the maximum-technologically feasible design for representative units where the harmonized per-phase efficiency value would have been unachievable for one of the representative units.

EEI requested that DOE provide summary tables of the ELs and the proposed TSLs to highlight any differences between the two. (EEI, Pub. Mtg. Tr., No. 34 at p. 125) Furthermore, EEI pointed out that CSL 0 is TSL 3 or 4 from the last rulemaking and is more efficient than a 2005 or 2007 unit. (EEI, Pub. Mtg. Tr., No. 34 at p. 113)

NEMA recommended that the TSLs from the previous rulemaking be visually overlaid with the ELs from this rulemaking to allow easier comparisons between the recent standards and the current rulemaking. (NEMA, No. 13 at pp. 6–7)

Schneider Electric commented that it would like to see the label ''CSL 0'' removed from the analysis and instead replaced with exactly what those levels were and where it was mandated, *i.e.,* in EISA 2007. (SE., Pub. Mtg. Tr., No. 34 at p. 119)

DOE has found that multiple sets of efficiency levels and candidate standard levels have confused stakeholders in the past, and prefers to limit this document's discussion to those ELs at hand. EEI is correct to point out that the previous rule's standard is the current rule's baseline. DOE is statutorily prohibited from decreasing efficiency standards, and so any discussion of future standards necessarily begins with what is in effect at the time.

Berman Economics noted that high-cost designs that are above the minimum first cost amount for a given EL should not be considered in DOE's analysis because they do not represent the cost required to comply with the standard. It felt that, by including these designs, DOE artificially increases the cost estimate from the Monte Carlo analysis. (BE, No. 16 at pp. 6–7)

Although DOE's current test procedure specifies a load value at which to test transformers, DOE recognizes that different consumers see real-world loadings that may be higher or lower. In those cases, consumers may choose a transformer offering a lower LCC even when faced with a higher first cost. If DOE's cost/efficiency design cloud were redrawn to reflect loadings other than those specified in the test procedure, different designs would migrate to the optimum frontier of the cloud. Additionally, although DOE's engineering analysis reflects a range of transformers costs for a given EL, the LCC analysis only selects transformer designs near the lowest cost point.

8. Scaling Methodology

For the preliminary analysis, DOE performed a detailed analysis on each representative unit and then extrapolated the results of its analysis from the unit studied to the other kVA ratings within that same engineering design line. DOE performed this extrapolation to develop inputs to the national impacts analysis. The technique it used to extrapolate the findings of the representative unit to the other kVA ratings within a design line is referred to as ''the 0.75 scaling rule.'' This rule states that, for similarly designed transformers, costs of construction and losses scale with the ratio of their kVA ratings raised to the 0.75 power. The relationship is valid where the optimum efficiency loading points of the two transformers being scaled are the same. DOE used the same methodology to scale its findings during

the previous rulemaking on distribution transformers.

In response to the preliminary analysis, DOE received multiple comments regarding the 0.75 scaling rule. HVOLT expressed its support for the use of the 0.75 scaling rule. (HVOLT, Pub. Mtg. Tr., No. 34 at p. 139) Several other stakeholders stated that they believed the 0.75 scaling rule is accurate over small kVA ranges, but can break down near the limits of the scaling range. (HPS, No. 3 at p.4; NPCC/NEEA, No. 11 at pp. 7–8; NEMA, No. 13 at pp. 4, 6; SE., No. 18 at p.7; HI, No. 23 at p. 7; FPT, Pub. Mtg. Tr., No. 34 at p. 137) NPCC, NEEA and NEMA recommended that DOE consider analyzing additional design lines and representative units to maintain the integrity of the scaling. (NPCC/NEEA, No. 11 at pp. 7–8; NEMA, No. 13 at pp. 4–6) FPT also suggested introducing additional designs to the analysis, noting that it has found it difficult to meet the efficiency levels on the lower-end kVAs for the dry-types. (FPT, Pub. Mtg. Tr., No. 34 at p. 136) Schneider Electric recommended that DOE expand its kVA ranges within the design lines and overlay the design lines to allow for multiple evaluation points within the scaling rule. (SE., No. 18 at p. 7) Howard Industries believed that DOE should adjust the 0.75 scaling factor to account for more efficient and costlier materials needed to stay within the size and weight constraints of customers' demands. (HI, No. 23 at p. 7)

EEI commented that the 0.75 scaling rule may not be accurate for scaling outside a single standard deviation of kVA size. EEI recommended that DOE work with manufacturers to create new formulas for scaling beyond a single standard deviation. (EEI, No. 29 at p. 6) Warner Power stated that the 0.75 scaling rule is less accurate for higher scaling ratios where transformer designs change significantly, but felt that the rule was accurate for scaling where the ratio of kVAs was between 0.8 and 1.2. (WP, No. 30 at pp. 7, 11)

ABB noted that the 0.75 scaling rule is accurate within about a half order of magnitude when all other parameters are constant. ABB also stated that in their experience the 0.75 coefficient increases as the kVA decreases and approaches 1.0 as an upper limit. ABB added that the same is true as the BIL increases. (ABB, No. 14 at pp. 10, 13) Hammond agreed that the 0.75 scaling rule can be problematic for smaller kVAs of higher voltage and BIL ratings. (HPS, No. 3 at p. 4) Metglas explained that the scaling rule assumes one has the same percentage insulation in the cross-section of the conductor in the transformers while, in reality, as the transformers get smaller, more insulation is needed to maintain the same BIL. FPT believed that the 0.75 scaling rule was less accurate for lower kVA ratings (below 500 kVA), in part because small kVA sizes require very small wires that are dramatically more expensive than larger wires in larger kVA sizes. FPT also claimed that current standards are more difficult to meet at the lower kVA sizes. (FPT, No. 27 at pp. 14–17)

PP expressed frustration that the design work involved extrapolating from a 500 kVA model to a 833 kVA model and believed that the extrapolations did not hold true. (PP, Pub. Mtg. Tr., No. 34 at p. 135)

Because it is not practical to directly analyze every combination of design options and kVAs under the rulemaking's scope of coverage, DOE selected a smaller number of units it believed to be representative of the larger scope. Many of the current design lines use representative units retained from the 2007 rulemaking with minor modifications. To generate efficiency values for kVA values not directly analyzed, DOE employed a scaling methodology based on physical principles (overviewed in Appendix 5B) and widely used by industry in various forms. DOE's scaling methodology is an approximation and, as with any approximation, can suffer in accuracy as it is extended further from its reference value.

Several of the comments on this topic suggest that DOE could improve the accuracy of its scaling by limiting the range over which it is applied. To that end, DOE has added a design line (13A to address the case of high BIL, small kVA medium-voltage dry-type units while redesignating the former 13 ''13B''.) DOE will seek to corroborate scaling results with direct analysis in other areas that fall outside of the scaling ranges put forth by commenters for the final rule.

Additionally, DOE modified the way it splices extrapolations from each representative unit to cover equipment classes at large. Previously, DOE extrapolated curves from individual data points and blended them near the boundaries to set standards. Currently, DOE fits a single curve through all available data points in a space and believes that the resulting curve will both be smoother and offer a more robust scaling behavior over the covered kVA range.

Finally, although the laws of physics applied to an ideal transformer yield a scaling exponent of 0.75, DOE recognizes that real-world engineering considerations may produce a behavior better modeled using a different exponent. A number of commenters suggested that the smaller transformers in particular had difficulty meeting standards, which seems to imply that the overall shape of the efficiency curve should come from a lower overall exponent. This would tend to project lower efficiencies at lower kVAs and higher efficiencies at higher kVAs. DOE seeks to further understand how kVA rating and other factors combine to affect transformer efficiency, and seeks comment to that end.

Negotiating parties agreed that deriving results for the ''high'' and ''low'' BIL MVDT equipment classes, namely, 5,6,9, and 10, was the most appropriate way to correctly establish relative standards such that the various efficiencies were logical with respect to each other. (ASAP, Pub. Mtg. Tr., No. ## (docket number unavailable) at p. 175) Parties agreed that standards should be set by adding 10 percent in losses to equipment classes 7 and 8 to derive standards for equipment classes 9 and 10 and subtracting 10 percent in losses from classes 7 and 8 to derive standards for classes 5 and 6. DOE's own analysis suggests that this method of scaling is reasonable and proposes using it to derive standards as it does it today's notice.

Furthermore, several parties noted that liquid-immersed transformers experienced smaller, but not insignificant, performance benefits or penalties as a function of BIL and noted that standards for liquid-immersed units could be tweaked in the same manner as those from MVDT units. Doing so would permit capture of increased energy savings at the more-efficient BILs while still permitting manufacture of the higher BIL transformers at reasonable expense.

DOE requests comment on scaling across both BIL and kVA ratings as it applies to both dry-type and liquid-immersed transformers and on specific ways for DOE to establish a sound methodology for deriving BIL adjustment factors in the liquid-immersed case. DOE also requests comment on how standards are best harmonized across phase counts for all types of transformers and how standards for single-phase transformers may be scaled to produce those of three-phase transformers and vice-versa.

9. Material Availability

DOE received several comments expressing concern over the availability of materials, including core steel and conductors, needed to build energy efficient distribution transformers.

These issues pertain to a global scarcity of materials as well as issues of materials access for small manufacturers.

NPCC, NEEA, Schneider Electric, and the joint comments from ASAP, ACEEE and NRDC all indicated that DOE should revise its selling prices to make sure they are in line with market prices. They commented that DOE's selling prices were too high compared to the prices supplied by manufacturers at the public meeting. (NPCC/NEEA, No. 11 at p. 2 and pp. 6–7; SE., No. 18 at p. 8; ASAP/ACEEE/NRDC, No. 28 at pp. 1–2) The ASAP, ACEEE and NRDC joint comments further specified that commenters at the meeting noted that the price of a small purchase quantity going through a distributor was still 40–60% lower than DOE's price estimates. They added that, if DOE is unable to determine how to adjust its cost inputs, it should apply an adjustment factor to the final selling price to bring it in line with current market prices. If DOE cannot determine prices for LVDT, the joint commenters recommended that DOE apply the adjustment factor from the liquid-immersed analysis to the dry-type analysis. (ASAP/ACEEE/NRDC, No. 28 at pp. 1–2)

Conversely, HVolt, Inc. commented that DOE's finished transformer prices are too low and that several manufacturers have generated selling prices (using current materials prices and low markups) that are 2.5–4 times higher than DOE's prices at CSL 6. (HVOLT, No. 33 at p. 1)

Manufacturers often accuse DOE or over-representing manufacturer selling prices, while parties interested in increasing energy efficiency accuse it of under-representing these prices. DOE is interested in tailoring its analysis to align more closely with the market and believes the best way for parties to demonstrate falsely high or low prices is to submit actual purchase or bid records for designs close to DOE's representative units. If needed, such records could be submitted under the terms of a non-disclosure agreement. Finally, DOE notes that it is the incremental, and not absolute, cost of added efficiency that dominates the cost-effectiveness calculations that it performs. Consequently, errors in the absolute prices will have a smaller effect on the rule outcome than errors in the cost of marginal efficiency. DOE requests further comment on manufacturer selling price and any accompanying data that can help substantiate such comment.

Southern Company commented that DOE should consider the limited supply of amorphous steel when evaluating amended standard levels. It added that there is not enough amorphous steel to meet the demand of the entire transformer industry, and noted that prices for amorphous steel could increase substantially if it was the sole core material used in distribution transformer designs. (SC, No. 22 at p. 1)

DOE is aware that many core steels, including amorphous steels, have constraints on their supply and presents an analysis of global steel supply in Appendix 3–A.

10. Primary Voltage Sensitivities

DOE understands that primary voltage and the accompanying BIL may increasingly affect efficiency of liquid-immersed transformers as standards rise. DOE may conduct primary voltage sensitivity analysis in order to better quantify the effects of BIL and primary voltage on efficiency, and may use such information to consider establishing equipment classes by BIL rating for liquid-immersed distribution transformers.

11. Impedance

In the preliminary analysis, DOE only considered transformer designs with impedances within the normal impedance ranges specified in Table 1 and Table 2 of 10 CFR part 431.192. These impedances represent the typical range of impedance that is used for a given liquid-immersed or dry-type transformer based on its kVA rating and whether it is single-phase or three-phase.

Commonwealth Edison (ComEd) commented that its single-phase overhead transformer specification only allows impedances between 5.3 and 6.2 percent for 250, 333, and 500 kVA transformers. Furthermore, ComEd commented that manufacturers are already having difficulty creating designs with the minimum impedance requirement of 5.3 percent based on the current standard level. (ComEd, No. 24 at p. 3) Similarly, Central Moloney commented that it also has limitations on the impedance of the transformers, which get harder to meet at larger sizes. (Central Moloney, Pub. Mtg. Tr., No. 34 at p. 78)

For the NOPR, DOE continued to consider designs within the normal impedance ranges used in the preliminary analysis. While certain applications may have specifications that are more stringent than these normal impedance ranges, DOE believes that the majority of applications are able to tolerate impedances within these ranges. Since DOE considers a wide array of designs within the normal impedance ranges, it adequately considers the cost considerations of higher and lower impedance tolerances.

DOE requests comment on impedance values and on any related parameters (*e.g.,* inrush current, X/R ratio) that may be used in evaluation of distribution transformers. DOE requests particular comment on how any of those parameters may be affected by energy conservation standards of today's proposed levels or higher.

12. Size and Weight

In the preliminary analysis, DOE did not constrain the weight of its designs. DOE accounted for the full weight of each design generated by the optimization software based on its materials and hardware. Similarly, DOE let several dimensional measurements of its designs vary based on the optimal core/coil dimensions plus space factors. However, DOE did hold certain tank and enclosure dimensions constant for its design lines. Most notably, DOE fixed the height dimension on all of its rectangular tank transformers. For each design that had variable dimensions, DOE accounted for the additional cost of installing the unit, where applicable.

Several interested parties expressed concerns about the size and weight of the designs used in DOE's analysis. Power Partners commented that single-phase liquid-immersed units above 500 kVA are very difficult to design for the current standard level when accounting for the weight and size constraints that users specify. (PP, Pub. Mtg. Tr., No. 34 at p. 46) Power Partners and Howard Industries commented that this issue is particularly a concern for pole-mounted transformers, and noted that many customers put large (500 kVA single-phase) units on poles. (PP, Pub. Mtg. Tr., No. 34 at p. 75; HI, Pub. Mtg. Tr., No. 34 at p. 77) Pepco Holdings, Inc. (PHI) stated that the largest transformer that it will hang on a pole is 333 kVA, but noted that it, too, has concerns about weight and size. (PHI, Pub. Mtg. Tr., No. 34 at p. 77)

Many stakeholders noted that size and weight limitations exist for certain customer specifications. Power Partners, Central Moloney (CM), and PHI all commented that restrictions exist for size and weight, and stated that DOE should account for maximum weight and dimensional limits. (PP, Pub. Mtg. Tr., No. 34 at p. 73; CM, Pub. Mtg. Tr., No. 34 at p. 77; PHI, Pub. Mtg. Tr., No. 34 at p. 74) PHI noted that these restrictions are especially important for pole-mount, subway, subsurface, and network transformers. (PHI, No. 26 and 37 at p. 1) Power Partners commented that over 80 percent of new transformers manufactured are for replacement, and

noted that replacement pole-mount transformers need to fit into the existing pole space. As such, Power Partners suggested a maximum weight of 650 pounds for the representative unit in DL2 (25 kVA single-phase) and a maximum weight of 3,600 pounds for the representative unit in DL3 (500 kVA single-phase). (PP, No. 19 at p. 3) Conversely, PG&E commented that the large transformers in its service area are typically pad-mounted and noted that weight is not a big concern. (PG&E, Pub. Mtg. Tr., No. 34 at p. 74)

For the NOPR engineering analysis, DOE did not restrict its designs based on a limit for size or weight beyond the fixed height measurements it was already considering for the rectangular tank sizes. DOE understands that larger transformers may require additional installation costs such as a new pole change-out or vault expansion. To the extent that it had data on these additional costs, DOE accounted for them in its LCC analysis, as described in section IV.F. However, DOE did not choose to limit its design specifications based on a specific size or weight constraint.

During negotiation meetings, several parties noted that transformers in underground vaults could face staggering cost increases if obligated to comply with unmodified standards. (ABB, Pub. Mtg. Tr., No. 89 at p. 245) The parties proposed to create a separate equipment class for such units and began discussing how such a class might be defined in terms of physical features and such that it would not represent a standards loophole. DOE requests comment on the possibility of establishing a separate equipment class for vault transformers and how such a class could be defined.

Nonetheless, DOE notes that the majority of its designs are within the weight constraints suggested by Power Partners. In design line 2, over 95 percent of DOE's designs are below 650 pounds. In design line 3, over 62 percent of DOE's designs are below 3,600 pounds, and when only the designs with the lowest first cost are considered, nearly 74 percent of the designs are less than 3,600 pounds. The majority of the designs that exceed 3,600 pounds are at the maximum efficiency levels using an amorphous core steel.

During negotiations, Federal Pacific and HVOLT commented that substation-style designs common to the medium-voltage, dry-type market are larger than the designs that DOE had previously modeled and would exhibit bus and lead losses reflecting their longer buses and leads. (HVOLT, Pub. Mtg. Tr., No. 91 at p. 290)

DOE worked with manufacturers to explore the magnitude of the effect of longer buses and leads and found it to be small relative to the gap between efficiency levels. Nonetheless, DOE made small upward adjustments to bus and lead losses of all medium-voltage, dry-type design lines. Details on the specific values of the adjustments made can be found in Chapter 5 of the TSD.

D. Markups Analysis

The markups analysis develops appropriate markups in the distribution chain to convert the estimates of manufacturer selling price derived in the engineering analysis to customer prices. In the preliminary analysis, DOE determined the distribution channels for distribution transformers, their shares of the market, and the markups associated with the main parties in the distribution chain, distributors, contractors and electric utilities.

Several stakeholders commented that DOE's analysis failed to include the distribution channel that delivers liquid-immersed transformers directly from manufacturers to large utilities. (NEEA, No. 11 at p. 2, Joint Comments PG&E and SCE, No. 32 at p. 2, and EMS, Public Meeting Transcript, No. 34 at p. 145) EMS Consulting commented that when large utilities purchase directly from manufacturers, the commission of the manufacturer's representative is included in the price of the transformer and should not be added in separately. (EMS, Public Meeting Transcript, No. 34 at p. 145) PG&E and SCE noted that because utilities often pay much less for transformers purchased in bulk, the selling prices DOE presented in the preliminary analysis are too high. (Joint Comments PG&E and SCE, No. 32 at p. 2) For the NOPR, DOE added a new distribution channel to represent the direct sale of transformers to independently owned utilities, which account for approximately 80 percent of liquid-immersed transformer shipments. This sales channel removes a distributor markup, which had included the commission of the manufacturer's representative in the preliminary analysis. The inclusion of this channel reduces the overall markup for liquid-immersed transformers.

EEI stated that a distribution channel from manufacturers to distributors to multi-site commercial and/or industrial customers (*i.e.,* large purchasers) may represent 10 percent to 25 percent of dry-type transformer sales. (EEI, No. 29 at p. 6) DOE did not find data that would allow it to include the channel mentioned by EEI as a separate distribution channel.

In the preliminary analysis, DOE developed average distributor and contractor markups by examining the installation and contractor cost estimates provided by *RS Means Electrical Cost Data 2011.* DOE developed separate markups for baseline products (baseline markups) and for the incremental cost of more-efficient products (incremental markups). Incremental markups are coefficients that relate the change in the installation cost due to the increase equipment weight of some higher-efficiency models.

FPT agreed with the distributor markups that DOE developed for liquid-immersed transformers. (FPT, No. 27 at p. 17) HPS agreed that a 15-percent markup is appropriate for distributor markup. (HPS, No. 3 at p. 6) ABB and NEMA, on the other hand, recommended that DOE consult with a sample of major distributors to obtain a better understanding of internal markups. (ABB, No. 14 at p. 18; NEMA, No. 13 at p. 8) DOE was not able to conduct a representative survey of transformer distributors within the context of the current rulemaking. Given the supportive comments from FPT and HPS, DOE retained the markup used in the preliminary analysis for the NOPR for liquid-immersed and low-voltage dry-type transformers. However, based on input received from manufacturers during the negotiated rulemaking process, DOE revised the distributor and contractor markups that affect the retail price for medium-voltage dry-type transformers to 1.26 and 1.16, respectively.

HVOLT suggested that DOE's estimated contractor labor and materials markup that affects the installation costs of 1.43 is too high. (HVOLT, Public Meeting Transcript, No. 34 at p. 149) DOE used *RS Means Electrical Cost Data 2010* to estimate a contractor labor and materials markup of 1.43. This markup is justified as it includes: (1) Direct labor required for installation, including unloading, uncrating, hauling within 200 feet of the loading dock, setting in place, connecting to the distribution network, and testing; and (2) equipment rentals necessary for completion of the installation such as a forklift, and/or hoist.

Chapter 6 of the NOPR TSD provides additional detail on the markups analysis.

E. Energy Use Analysis

The energy use and end-use load characterization analysis (chapter 6) produced energy use estimates and end-

use load shapes for distribution transformers. The energy use estimates enabled evaluation of energy savings from the operation of distribution transformer equipment at various efficiency levels, while the end-use load characterization allowed evaluation of the impact on monthly and peak demand for electricity from the operation of transformers.

The energy used by distribution transformers is characterized by two types of losses. The first are no-load losses, which are also known as core losses. No-load losses are roughly constant and exist whenever the transformer is energized (*i.e.,* connected to live power lines). The second are load losses, which are also known as resistance or I^2R losses. Load losses vary with the square of the load being served by the transformer.

Because the application of distribution transformers varies significantly by type of transformer (liquid-immersed or dry-type) and ownership (electric utilities own approximately 95 percent of liquid-immersed transformers, commercial/industrial entities use mainly dry-type), DOE performed two separate end-use load analyses to evaluate distribution transformer efficiency. The analysis for liquid-immersed transformers assumes that these are owned by utilities and uses hourly load and price data to estimate the energy, peak demand, and cost impacts of improved efficiency. For dry-type transformers, the analysis assumes that these are owned by commercial and industrial customers, so the energy and cost savings estimates are based on monthly building-level demand and energy consumption data and marginal electricity prices. In both cases, the energy and cost savings are estimated for individual transformers and aggregated to the national level using weights derived from either utility or commercial/industrial building data.

For utilities, the cost of serving the next increment of load varies as a function of the current load on the system. To correctly estimate the cost impacts of improved transformer efficiency, it is therefore important to capture the correlation between electric system loads and operating costs and between individual transformer loads and system loads. For this reason, DOE estimated hourly loads on individual liquid-immersed transformers using a statistical model that simulates two relationships: (1) The relationship between system load and system marginal price; and (2) the relationship between the transformer load and system load. Both are estimated at a regional level.

DOE received a number of comments on its preliminary analysis for liquid-immersed transformers.

Regarding the price-load correlation incorporated into the end-use load characterization, EEI suggested that DOE obtain data for 2009/2010 to develop a more complete picture of the savings associated with reducing core and coil losses in liquid-filled transformers. (EEI, No. 29 at p. 6) Because changes to the functional form of the price-load correlation are small compared to the variability in the model, updating the data will not affect the resulting price-load correlation. Thus, DOE continued to use 2008 *Federal Energy Regulatory Commission (FERC) Form714* lambda data and market prices for the NOPR analysis.

EEI also suggested that DOE use tariffs to determine the prices paid for base load electricity generation, because reducing the constant core losses will not save electricity at marginal rates. (EEI, No. 29 at p. 8) NRECA stated that most NRECA members make wholesale purchases at tariff rates that reflect installed, existing resources, with only a small increment based on hourly, market-based purchases. (NRECA, No. 31 and 36 at p. 4) They concluded that DOE's approach overemphasized rates for purchases made on the hourly market.

The energy savings from more efficient distribution transformers are a small decrement to the total energy consumption. The hourly price reflects the cost of serving a small, marginal change in load, and is therefore the appropriate method to use to estimate the costs savings associated with energy savings. This is true for both coil losses and winding losses, and is independent of how the transformer owner pays for the bulk of their power purchases. DOE produced a detailed comparison of tariff-based marginal prices and hourly marginal prices for peaking end-uses as part of the Commercial Unitary Air Conditioner & Heat Pump rulemaking.[28] This analysis confirmed that, on an annual average basis, both methods lead to similar cost estimates.

Regarding hourly load data, NEMA recommended that DOE consult with utilities, building owners, and other end-users to obtain any available field data. (NEMA, No. 13 at p. 8) DOE consulted with a variety of industry contacts but was unable to find any source of metered hourly load for transformers. Data submitted by subcommittee member K. Winder of Moon Lake Electric during the negotiations were used to validate the load models for single-phase liquid-immersed transformers. For the final rule, if stakeholders are able to provide, or assist in providing such data, DOE will use it to validate and modify the transformer load models as needed.

Dry-type transformers are primarily installed on buildings and owned by the building owner/operator. Commercial and industrial (C&I) utility customers are typically billed monthly, with the bill based on both electricity consumption and demand. Hence, the value of improved transformer efficiency depends on both the load impacts on the customer's electricity consumption and demand and the customer's marginal prices.

The customer sample of dry-type distribution transformer owners was taken from the EIA Commercial Buildings Energy Consumption Survey (CBECS) databases. Survey data for the years 1992 and 1995 were used, as these are the only years for which monthly customer electricity consumption (kWh) and peak demand (kW) are provided. To account for changes in the distribution of building floor space by building type and size, the weights defined in the 1992 and 1995 building samples were rescaled to reflect the distribution in the most recent 2003 CBECS survey. CBECS covers primarily commercial buildings, but a significant fraction of transformers are shipped to industrial building owners. To account for this in the sample, data from the 2006 Manufacturing Energy Consumption Survey (MECS) were used to estimate the amount of floor space of buildings that might use the type of transformer covered by the rulemaking. The weights assigned to the building sample were rescaled to reflect this additional floor space. Only the weights of large buildings were rescaled.

Regarding DOE's energy use characterization, EEI stated that DOE should use EIA's 2006 MECS to develop baseline electricity consumption and demand for industrial facilities. (EEI, No. 29 at p. 8) Using CBECS data as a proxy, they said, may lead to incorrect analysis on transformers for the industrial facilities being modeled. (EEI, No. 29 at p. 8) The MECS survey data does not contain any building-level information on energy consumption, and contains no information whatsoever on electricity demand. Thus, DOE retained use of CBECS data for the NOPR analysis.

Transformer loading is an important factor in determining which types of transformer designs will deliver a specified efficiency, and for calculating transformer losses. In the preliminary

[28] See *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/ac_hp.html.*

analysis, DOE assumed non-residential load factors of 35 percent, 40 percent, and 25 percent for medium-voltage single-phase, medium-voltage three-phase, and low-voltage transformers respectively. Several stakeholders commented on the load factors DOE used to characterize commercial and industrial loads. EEI suggested that DOE use Electric Power Research Institute (EPRI) and/or utility load factor studies to develop separate commercial and industrial load factors to use in its analysis. (EEI, No. 29 at p. 7) suggested that load factors for large commercial buildings have been trending upward because of the increased numbers of data centers. (HEX, Public Meeting Transcript, No. 34 at p. 192) EEI suggested that, based on EPRI data, DOE use higher load factors (50–55 percent for commercial buildings and 70–80 percent for industrial buildings). (EEI, Public Meeting Transcript, No. 34 at p. 168) ABB stated that DOE's current assumptions about average load factors are sufficiently accurate. (ABB, No. 14 at p. 18) FPT stated commercial and industrial users tend to load their transformers to a lower percent of nameplate than utilities would load residential liquid-filled transformers because of the greater risk and impact of an outage of a transformer in a commercial or industrial installation. (FTP, No. 27 at p. 19)

Several subcommittee members commented that in rural areas the number of customers per transformer is likely to be significantly lower than in urban or suburban areas, which in turn results in lower RMS loads. (APPA and NRECA, Public Meeting Transcript, No. 91 at p. 201) To account for this effect, DOE performed an analysis to determine an average population density in the territory served by each of the utilities represented in the LCC simulation. For each utility, EIA Form 861 data were used to generate a list of counties served by the utility. Census data were used to determine the average housing unit density in each county. An average over counties was then used to assign the utility to a low density, average density or high density category, with the cutoff for low density set at 32 households per square mile. For those utilities serving primarily low density areas the median of the RMS load distribution is reduced from 35 percent to 25 percent.

For the NOPR, DOE modified its analysis of dry-type transformer loading to: (1) model commercial and industrial building installations separately; and (2) reflect how transformers are used in the field. Higher-capacity medium-voltage transformers are loaded at 40 percent and smaller capacity transformers medium-voltage are loaded at 35 percent. Low-voltage transformers are loaded at 25 percent.

DOE received a number of comments that apply to both the hourly and monthly load models.

Regarding load (coil) losses, EEI suggested that DOE use diversity factors to account for the fact that significantly less than 100 percent of load losses are correlated with peak demands for a building or distribution system. Using this method, they said, would prevent overestimating cost savings. (EEI, No. 29 at p. 8) DOE already employs diversity factors to account for the fact that load (coil) losses often do not correlate with system or building peak loads.

Several stakeholders questioned whether DOE's analysis of responsibility factor accounts for the diversity of loads that transformers serve. NRECA, for instance, commented that diversity among a transformer's loads must be considered to set the responsibility factor for an individual transformer, if multiple customers are served through a transformer. (NRECA, No. 31 and 36 at p. 4) EEI also expressed concern that DOE's analysis of responsibility factor excluded diversity of loads. (EEI, No. 29 at p. 7) CDA recommended that DOE's analysis of responsibility factor consider the effect of load (winding) losses that likely occur simultaneously with system peaks. (CDA, No. 17 at p. 3)

The statistical model that DOE uses to estimate the responsibility factor for each individual transformer accounts for the diversity of loads. The responsibility factor model is applied to the load (winding) losses. The model accounts for the effect of diversity of individual transformer loads with respect to the peak of the aggregate load of the system that contains the transformer. Winding losses are included in the analysis.

Several stakeholders commented on DOE's use of a power factor of 1 in its end-use load characterization. PG&E and SCE stated that DOE should consider a power factor less than unity. (Joint Comments PG&E and SCE, No. 32 at p. 1) EEI suggested that DOE use a power factor other than 1 to account for decreased transformer efficiency from increased harmonic parasitic loads. (EEI, Public Meeting Transcript, No. 34 at p. 156)

In DOE's analysis, transformer loss estimates are calculated relative to the peak load on the transformer. The ratio of the peak load on a transformer to the transformer capacity is modeled by a distribution. There are two additional parameters that can affect the overall scale of transformer loading relative to its rated capacity. One is the power factor, and the other is a modeling parameter that adjusts the ratio of the RMS load relative to the square of the transformer peak load. Neither of these factors is known with great accuracy. The LCC spreadsheet allows the user to adjust the power factor. Adjusting the power factor from one to 0.95 may scale the energy losses up slightly, but as all transformer designs are affected equally, there should be no significant impact on the selection of designs that meet the candidate standard level. In the absence of additional field data on both RMS loads and power factors in different transformer installations, DOE does not believe that these small adjustments can significantly improve the accuracy of the LCC calculations.

NEEA commented on the calculation of load losses, recommending that DOE use hourly marginal line losses rather than annual average line losses to adjust distribution transformer loads to system generation loads. It stated that using hourly marginal line losses would more accurately reflect the value of load losses. (NEEA, No. 11 at p. 10) DOE found no data supporting the use of hourly marginal line losses rather than average annual line losses in calculating load losses. Thus, it continued to use average annual line losses for the NOPR analysis.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducts LCC and PBP analyses to evaluate the economic impacts on individual customers of potential energy conservation standards for distribution transformers. The LCC is the total customer expense over the life of a product, consisting of purchase and installation costs plus operating costs (expenses for energy use, maintenance and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product. The PBP is the estimated amount of time (in years) it takes customers to recover the increased purchase cost (including installation) of a more efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost (normally higher) due to a more stringent standard by the change in average annual operating cost (normally lower) that results from the standard.

For any given efficiency level, DOE measures the PBP and the change in LCC relative to an estimate of the base-case efficiency levels. The base-case estimate reflects the market in the absence of amended energy conservation standards, including the

market for products that exceed the current energy conservation standards.

Equipment price, installation cost, and baseline and standard affect the installed cost of the equipment. Transformer loading, load growth, power factor, annual energy use and demand, electricity costs, electricity price trends, and maintenance costs affect the operating cost. The compliance date of the standard, the discount rate, and the lifetime of equipment affect the calculation of the present value of annual operating cost savings from a proposed standard. Table IV.1 summarizes all the major inputs to the LCC and PBP analysis, and whether those inputs were revised for the proposed rule.

Commenting on the preliminary analysis, SC stated that because the assumptions DOE uses in its LCC and PBP analyses are not always correct and not specific to an individual utility or user, the conclusions are most likely inaccurate for some utilities. (SC, No. 22 at p. 4) DOE calculated the LCC and PBP for a representative sample (a distribution) of individual transformers. In this manner, DOE's analysis explicitly recognized that there is both variability and uncertainty in its inputs. DOE used Monte Carlo simulations to model the distributions of inputs. The Monte Carlo process statistically captures input variability and distribution without testing all possible input combinations. Some atypical situations may not be captured in the analysis, but DOE believes the analysis captures an adequate range of situations in which transformers operate.

TABLE IV.1—KEY INPUTS FOR THE LCC AND PBP ANALYSES

Inputs	Preliminary analysis description	Changes for proposed rule
Affecting Installed Costs:		
Equipment price	Derived by multiplying manufacturer selling price (from the engineering analysis) by distributor markup and contractor markup plus sales tax for dry-type transformers. For liquid-immersed transformers, DOE used manufacturer selling price plus small distributor markup plus sales tax. Shipping costs were included for both types of transformers.	Added a case for liquid-immersed transformers that are sold directly to utilities.
Installation cost	Includes a weight-specific component, derived from *RS Means Electrical Cost Data 2010* and a markup to cover installation labor, pole replacement costs for design line 2 and equipment wear and tear.	Updated the installation factors to use *RS Means Electrical Cost Data 2011.* Improved the modeling of pole replacements for design line 2.
Baseline and standard design selection	The selection of baseline and standard-compliant transformers depended on customer behavior. For liquid-immersed transformers, the fraction of purchases evaluated was 75%, while for dry-type transformers, the fraction of evaluated purchases was 50% for small capacity medium-voltage and 80% for large-capacity medium-voltage.	Adjusted the percent of evaluators to: 10% for liquid-immersed transformers, and 2% for low-voltage dry-type and 2% for medium-voltage dry-type transformers.
Affecting Operating Costs:		
Transformer loading	Loading depended on customer and transformer characteristics.	Adjusted loading as a function of transformer capacity and utility customer density.
Load growth	0.5% per year for liquid-immersed and 0% per year for dry-type transformers.	No change.
Power factor	Assumed to be unity	No change.
Annual energy use and demand	Derived from a statistical hourly load simulation for liquid-immersed transformers, and estimated from the 1992 and 1995 *Commercial Building Energy Consumption Survey* data for dry-type transformers using factors derived from hourly load data. Load losses varied as the square of the load and were equal to rated load losses at 100% loading.	No change.
Electricity costs	Derived from tariff-based and hourly based electricity prices. Capacity costs provided extra value for reducing losses at peak.	No change.
Electricity price trend	Obtained from *Annual Energy Outlook 2010* (*AEO2010*).	Updated to *Annual Energy Outlook 2011 (AEO 2011).*
Maintenance cost	Annual maintenance cost did not vary as a function of efficiency.	No change.
Compliance date	Assumed to be 2016	No change.
Discount rates	Mean real discount rates ranged from 4.0% for owners of pole-mounted, liquid-immersed transformers to 5.1% for dry-type transformer owners.	The mean real discount rates were adjusted to 3.7% for owners of liquid-immersed transformers and 4.6% for dry-type transformers.
Lifetime	Distribution of lifetimes, with mean lifetime for both liquid and dry-type transformers assumed to be 32 years.	No change.

The following sections contain brief discussions of comments on the inputs and key assumptions of DOE's LCC analysis and explain how DOE took these comments into consideration.

1. Modeling Transformer Purchase Decision

The LCC spreadsheet uses a purchase-decision model that specifies which of the hundreds of designs in the engineering database are likely to be selected by transformer purchasers to meet a given efficiency level. The engineering analysis yielded a cost-efficiency relationship in the form of manufacturer selling prices, no-load losses, and load losses for a wide range of realistic transformer designs. This set of data provides the LCC model with a distribution of transformer design choices.

DOE used an approach that focuses on the selection criteria customers are known to use when purchasing transformers. Those criteria include first costs, as well as what is known in the transformer industry as total owning cost (TOC). The TOC method combines first costs with the cost of losses. Purchasers of distribution transformers, especially in the utility sector, have long used the TOC method to determine which transformers to purchase. DOE refers to purchasers who use the TOC method as evaluators.

The utility industry developed TOC evaluation as an easy-to-use tool to reflect the unique financial environment faced by each transformer purchaser. To express variation in such factors as the cost of electric energy, and capacity and financing costs, the utility industry developed a range of evaluation factors, called A and B values, to use in their calculations. A and B are the equivalent first costs of the no-load and load losses (in $/watt), respectively.

In the preliminary analysis, DOE assumed that 75 percent of liquid-immersed transformers are purchased using TOC evaluation. DOE assumed that 25 percent of low-voltage dry-type transformers are purchased using TOC evaluation. For medium-voltage dry-type transformers, DOE assumed that 50 percent of smaller capacity units are purchased with TOC evaluation and that 85 percent of larger capacity units are purchased using TOC evaluation.

Several stakeholders commented on DOE's estimate of the share of purchasers who make purchase decisions based on TOC. FPT said that DOE significantly overstated the percentage of evaluators for dry-type distribution transformers. They estimated there are 0 percent to 1 percent evaluators for low-voltage dry-type, about 10 percent for medium-voltage dry-type, and about 20 percent for high-capacity dry-type distribution transformers. (FPT, No. 27 at p. 4) ABB agreed that DOE overestimated the number of evaluators. They estimated that evaluators represent less than 1 percent for low-voltage dry-type and small medium-voltage dry-type, and less than 5 percent for large medium-voltage dry-type. (ABB, No. 14 at p. 19) Other stakeholders agreed that DOE's estimates of evaluators are too high. (EEI, No. 29 at p. 8; ASAP, Public Meeting Transcript, No. 34 at p. 197) NEMA commented that the percent of evaluators seems high for some product lines, and recommended that DOE obtain information from individual manufacturers and end-users, or examine shipments data to determine evaluators. (NEMA, No. 13 at p. 8) ASAP *et al.* recommended that the DOE survey enough users and suppliers to develop a better estimate of the percentage of units purchased in 2010 that had significantly higher efficiency than the minimum standard. (Joint Comments ASAP, ACEEE and NRDC, No. 28 at p. 4)

Conducting a representative survey of users or manufacturers is not possible within the scope of the present rulemaking. For the NOPR analysis, DOE revised the evaluation rates, based on the available data and stakeholder comments. DOE revised its evaluation rates as follows: 10 percent for liquid-immersed, 2 percent for low-voltage, and 2 percent for medium-voltage dry-type transformers. The transformer selection approach is discussed in detail in chapter 8 of the NOPR TSD.

FPT stated that only utilities really evaluate based on A and B factors, so another method needs to be used to analyze other types of customers. FPT recommended that DOE base its analysis of industrial and commercial customers on PBP criteria. (FPT, No. 27 at p. 5) DOE effectively bases its analysis on PBP; the results are converted to equivalent A and B factors so that the same model structure can be used in all the spreadsheets.

HI stated that fewer customers will evaluate their purchases when DOE mandates higher efficiency levels, which would result in purchase of transformers with less than optimum efficiency for their application. (HI, No. 23 at p. 9) DOE acknowledges that evaluation rates may vary depending on the standard for a given design line. Because DOE has no basis for estimating this phenomenon, however, it used the same evaluation rates for each of the considered CSLs.

2. Inputs Affecting Installed Cost

a. Equipment Costs

In the LCC and PBP analysis, the equipment costs faced by distribution transformer purchasers are derived from the MSPs estimated in the engineering analysis and the overall markups estimated in the markups analysis.

Several stakeholders recommended that DOE lower its estimate of transformer selling prices. Based on its Internet review of selling prices, Metglas said the prices DOE generated are too high. (MET, Public Meeting Transcript, No. 34 at p. 97) PG&E and SCE suggested that DOE calibrate its prices against market data and exclude the cost of any additional features from the price estimates. (Joint Comments PG&E and SCE, No. 32 at p. 2) ASAP, ACEEE and NRDC agreed that DOE's estimated selling prices are too high, and recommended that DOE adjust its estimates based on market research, and then apply an adjustment factor to bring final transformer selling prices in line with observed prices. (Joint Comments ASAP, ACEEE and NRDC, No. 28 at pp. 1–2)

For the NOPR analysis, DOE reviewed bid documents on the Internet after the current standards took effect in 2010 and found a wide range of prices. DOE also received confidential data from NEEA on utility transformer purchases that showed a wide range of prices. The data did not clearly indicate that DOE's estimated customer prices are too high. DOE notes that the inclusion of a new distribution channel for liquid results in a lower average markup and thus lower average customer price for these products.

EEI stated that DOE should consider transformer pricing data from 2006 onward, because that period reflects the increasing global demand for distribution transformers as well as the increase in commodity costs for key transformer components. EEI asserted that transformer prices have not declined, but rather increased, compared to the rate of inflation. (EEI, No. 29 at pp. 2–4)

To forecast a price trend for the NOPR, DOE derived an inflation-adjusted index of the PPI for electric power and specialty transformer manufacturing over 1967–2010. These data show a long-term decline from 1975 to 2003, and then a steep increase since then. DOE believes that there is considerable uncertainty as to whether the recent trend has peaked, and would be followed by a return to the previous long-term declining trend, or whether the recent trend represents the beginning of a long-term rising trend

due to global demand for distribution transformers and rising commodity costs for key transformer components. Given the uncertainty, DOE has chosen to use constant prices (2010 levels) for both its LCC and PBP analysis and the NIA. For the NIA, DOE also analyzed the sensitivity of results to alternative transformer price forecasts. DOE developed one forecast in which prices decline after 2010, and one in which prices rise. Appendix 10–C of the NOPR TSD describes the historic data and the derivation of the default and alternative price forecasts.

DOE requests comments on the most appropriate trend to use for real transformer prices, both in the short run (to 2016) and the long run (2016–2045).

b. Installation Costs

Higher efficiency distribution transformers tend to be larger and heavier than less efficient designs. In the preliminary analysis, DOE included the increased cost of installing larger, heavier transformers as a component of the first cost of more efficient transformers. DOE presented the installation cost model and solicited comment from stakeholders.

Commenting on the preliminary analysis, several stakeholders stated that DOE should revise its assumption that 25 percent of pole-mounted liquid-immersed transformers greater than 1,000 pounds will require an additional $2,000 cost for pole change-out. (Joint Comments PG&E and SCE, No. 32 at p. 2; Joint Comments ASAP, ACEEE and NRDC, No. 28 at p. 2–3; NEEA, No. 11 at p. 8) The above comments reflect a misunderstanding of DOE's preliminary analysis. The 25 percent referred to in the comments was the maximum pole change-out fraction in the algorithm DOE used to estimate when change-outs would be required when the weight of the transformer exceeds 1,000 pounds.

EEI noted that several of its members expressed concern that more efficient liquid-immersed transformers would have much higher weights, which would increase costs in terms of installation and pole structural integrity for retrofits of existing pole-mounted transformers. (EEI, No. 29 at p. 2) APPA commented that DOE must adequately account for the costs of pole replacements due to larger transformers. (APPA, No. 21 at p. 2) SC stated that pole change-outs may be necessary when transformers are replaced because larger diameter poles will be needed to support transformer weight increases, and that larger diameter poles may be required with new transformer installations. (SC, No. 22 at p. 3) ComEd commented that for pole-mounted transformers, an increase in transformer weight may generate an increase in the required pole class to sustain the load. (ComEd, No. 24 at p. 1) PP agreed that additional transformer weight could make pole-mounting difficult. (PP, No. 19 at p. 1) NRECA and T&DEC stated that the added cost of replacing utility poles is especially burdensome for rural electric cooperatives. (Joint Comments NRECA and T&DEC, No. 31 and 36 at pp. 1–2)

Other stakeholders stated that standards that result in heavier transformers would not necessarily require pole change-outs. ASAP *et al.* stated that increased weight due to higher efficiency will not require pole change-outs. They noted that the primary determining factor in selecting pole size is the horizontal load, not the vertical load, which is affected by the transformer weight. (Joint Comments ASAP, ACEEE and NRDC, No. 28 at p. 2–3) PG&E and SCE stated that replacement of the pole (or pad) is more a function of transformer upsizing than of increased size due to efficiency improvement, adding that when replacing in-kind utility transformers, the rate of pole change-out due to increased size and weight of higher-efficiency improvements is very low. They also noted that for new construction, pole change-out is unnecessary because there is no existing pole to change out. (Joint Comments PG&E and SCE, No. 32 at p. 2)

In general, as transformers are redesigned to reach higher efficiency, the weight and size also increase. The degree of weight increase depends on how the design is modified to improve efficiency. For pole-mounted transformers, represented by design line (DL) 2, the increased weight may lead to situations where the pole needs to be replaced to support the additional weight of the transformer. This in turn leads to an increase in the installation cost. To account for this effect in the analysis, three steps are needed:

The first step is to determine whether the pole needs to be changed. This depends on the weight of the transformer in the base case compared to the weight of the transformer under a proposed efficiency level, and on assumptions about the load-bearing capacity of the pole. In the LCC calculation, it is assumed that a pole change-out will only be necessary if the weight increase is larger than 15 percent and greater than 150 lbs of the weight of the baseline unit. Utility poles are primarily made of wood. Both ANSI and NESC provide guidelines on how to estimate the strength of a pole based on the tree species, pole circumference and other factors. Natural variability in wood growth leads to a high degree of variability in strength values across a given pole class. Thus, NESC also provides guidelines on reliability, which result in an acceptable probability that a given pole will exceed the minimal required design strength. Because poles are sized to cope with large wind stresses and potential accumulation of snow and ice, this results in ''over-sizing'' of the pole relative to the load by a factor of two to four. Because of this ''over-sizing'' DOE limited the total fraction of pole replacements to 25 percent of the total population.

The second step is to determine the cost of a pole change-out. Specific examples of pole change-out costs were submitted by the sub-committee. These examples were consistent with data taken from the RSMeans Building Construction Cost database. Based on this information, a triangular distribution was used to estimate pole change-out costs, with a lower limit at $2,025 and an upper limit at $5,999. Utility poles have a finite life-time, so that pole change-out due to increased transformer weight should be counted as an early replacement of the pole; *i.e.* it is not correct to attribute the full cost of pole replacement to the transformer purchase. Equivalently, if a pole is changed out when a transformer is replaced, it will have a longer lifetime relative to the pole it replaces, which offsets some of the cost of the pole installation. To account for this affect, pole installation costs are multiplied by a factor *n/pole-lifetime,* which approximately represents the value of the additional years of life. The parameter *n* is chosen from a flat distribution between 1 and the pole lifetime, which is assumed to be 30 years.[29]

PHI noted that if a pole-mount transformer exceeds 900 pounds, they are required to have two crews for the replacement, a heavy-duty rigger and traffic control crew, adding to the expense of the installation. (PHI, No. 26 at p. 1) DOE's analysis accounts for increase in installation labor costs as transformer weight increases and is described in detail in chapter 6 of the NOPR TSD.

Regarding pad-mounted transformers, ComEd commented that new standards

[29] As the LCC represents the costs associated with purchase of a single transformer, to account for multiple transformers mounted on a single pole, the pole cost should also be divided by a factor representing the average number of transformers per pole. No data is currently available on the fraction of poles that have more than one transformer, so this factor is not included.

could require that the pads for some pad-mounted transformers receive foundation upgrades to accommodate the increased size and weight, which might require that generators be deployed to maintain customer services during the upgrade. (ComEd, No. 24 at p. 3) APPA also stated that DOE must adequately account for the costs of pad mount replacements due to larger transformers. (APPA, No. 21 at p. 2) HI noted that symmetric core technology could affect installation practices because the core design has a triangular footprint that requires a much deeper pad to accommodate the deeper tanks. (HI, No. 23 at p. 3) At present, DOE's model does not include any additional costs that may be required for pad-mounted transformers at higher efficiency levels. DOE requests data on the weight and size thresholds that might be expected to trigger pad mount upgrades and on approximate costs of a typical upgrade.

DOE received comments on the affect that that symmetric core technology would have on installation costs. NRECA described theoretical evaluation that indicates weight and labor costs would increase for symmetric core technology. (NRECA, No. 31 and 36 at p. 3) The engineering analysis estimated the weight of transformers that utilize symmetric core technology. As mentioned above, the LCC and PBP analysis accounts for increase in installation labor costs as transformer weight increases.

EEI noted that several of its members expressed concern that more efficient transformers will be larger in size (height, width, and depth), which will have an impact for all retrofit situations, especially in underground vaults, which in many urban areas cannot be physically expanded, or can only be expanded at a great cost in terms of materials, labor, and street closures. (EEI, No. 29 at p. 2) Because vault-installed transformers account for a small fraction of transformer installations, and mainly affect urban utilities that have underground distribution systems, DOE chose to analyze these transformers as part of the customer subgroup analysis. This analysis, and the approach DOE used to account for installing larger-volume transformers, is described in section IV.H.

3. Inputs Affecting Operating Costs

a. Transformer Loading

DOE's assumptions about loading of different types of transformers are described in section IV.E. DOE generally estimated the loading on larger transformers is greater than the loading on smaller transformers.

b. Load Growth Trends

The LCC takes into account the projected operating costs for distribution transformers many years into the future. This projection requires an estimate of how the electrical load on transformers will change over time. In the preliminary analysis, for dry-type transformers, DOE assumed no load growth, while for liquid-immersed transformers DOE used as the default scenario a one-percent-per-year load growth. It applied the load growth factor to each transformer beginning in 2016. To explore the LCC sensitivity to variations in load growth, DOE included in the model the ability to examine scenarios with zero percent, one percent, and two percent load growth.

DOE did not receive comments regarding its load growth assumptions, and it retained the assumptions described above for the NOPR analysis.

c. Electricity Costs

DOE needed estimates of electricity prices and costs to place a value on transformer losses for the LCC calculation. As discussed in section IV.E, DOE created two sets of electricity prices to estimate annual energy expenses for its analysis: an hourly-based estimate of wholesale electricity costs for the liquid-immersed transformer market, and a tariff-based estimate for the dry-type transformer market. IV.E also presents the comments received on this topic and DOE's response.

DOE received a few comments regarding electricity cost estimation. Electricity cost estimates are discussed in detail in chapter 7 of the NOPR TSD.

d. Electricity Price Trends

For the relative change in electricity prices in future years, DOE relied on price forecasts from the Energy Information Administration (EIA) *Annual Energy Outlook* (*AEO*). For the preliminary analysis, DOE used price forecasts from *AEO 2011*.

PG&E and SCE considered DOE's forecasted electricity prices in the preliminary analysis to be low. They recommended that DOE revisit their electric price forecast to ensure it accurately reflects historical trends and potential future global scenarios that may drive electricity prices higher than otherwise anticipated. (Joint Comments PG&E and SCE, No. 32 at p. 2) For the proposed rule, DOE updated the price forecast to *AEO 2011* and examined the sensitivity of analysis results to changes in electricity price trends. Appendix 8–D of the NOPR TSD provides a sensitivity analysis for equipment of each product group with the largest market shares, for liquid-immersed transformers design lines 1 and 5 are examined, for low-voltage dry-type transformers design line 7 is examined, and for medium-voltage dry-type transformers design line 12. These analysis shows that the effect of changes in electricity price trends, compared to changes in other analysis inputs, is relatively small. DOE evaluated a variety of potential sensitivities, and the robustness of analysis results with respect to the full range of sensitivities, in weighing the potential benefits and burdens of the proposed rule.

e. Standards Compliance Date

DOE calculated customer impacts as if each new distribution transformer purchase occurs in the year manufacturers must comply with the standard. For the preliminary analysis, this was assumed to be January 1, 2016.

Several stakeholders commented on the compliance date for new efficiency standards for distribution transformers. Howard Industries stated that the feasibility of the proposed date depends on the magnitude of changes in the new rulemaking and the supply chain limitations that will occur once the economy recovers. They estimated that they will need until the January 1, 2016, date to comply with new efficiency levels for liquid-immersed distribution transformers. (HI, No. 23 at p. 1) EEI agreed that the compliance date for any new standards should be no sooner than January 1, 2016. (EEI, No. 29 at p. 4) Schneider Electric commented that the previous standard for low-voltage dry-type transformers was implemented within 16 months because many manufacturers already were producing enough compliant transformers that it was a stock product. It noted that circumstances are not the same for the new standard levels, and a longer period should be allowed for compliance. (SE., No. 18 at p. 5) (NEEA agreed with the current compliance date, but said that if the final rule is not stringent, DOE should consider an earlier date and/or should examine the interaction between stringency of standards with the number of models already in production. (NEEA, No. 11 at p. 10)

As discussed in section II.A, if DOE finds that amended standards for distribution transformers are warranted, DOE must publish a final rule containing such amended standards by October 1, 2012. The statutorily-required compliance date of January 1, 2016, provides manufacturers with over three years to prepare for manufacturing

distribution transformers to the new standards.

f. Discount Rates

The discount rate is the rate at which future expenditures are discounted to estimate their present value. DOE employs a two-step approach in calculating discount rates for analyzing customer economic impacts. The first step is to assume that the actual customer cost of capital approximates the appropriate customer discount rate. The second step is to use the use the capital asset pricing model (CAPM) to calculate the equity capital component of the customer discount rate. For the preliminary analysis, DOE estimated a statistical distribution of commercial customer discount rates that varied by transformer type by calculating the cost of capital for the different types of transformer owners.

Commenting on the preliminary analysis, EEI stated that small businesses and entities under financial duress likely would face significantly higher effective discount rates. (EEI, No. 29 at p. 8) The intent of the LCC analysis is to estimate the economic impacts of higher-efficiency transformers over a representative range of customer situations. While the discount rates used may not be applicable for all customers, DOE believes that they reflect the financial situation of the majority of transformer customers.

More detail regarding DOE's estimates of commercial customer discount rates is provided in chapter 8 of the NOPR TSD.

g. Lifetime

DOE defined distribution transformer life as the age at which the transformer retires from service. For the preliminary analysis, DOE assumed, based on a report by Oak Ridge National Laboratory,[30] that the average life of distribution transformers is 32 years. This lifetime assumption includes a constant failure rate of 0.5 percent/year due to lightning and other random failures unrelated to transformer age and an additional corrosive failure rate of 0.5 percent/year starting at year 15.

Commenting on this assumption, HVOLT and PHI suggested that DOE use a lifetime of 30 years. (HVOLT, Public Meeting Transcript, No. 34 at p. 126; PHI, Public Meeting Transcript, No. 34 at p. 210) DOE did not receive any additional data that provide a basis for changing its 32-year assumption on distributor lifetime, so it retained the approach used in the preliminary analysis for the NOPR analysis.

h. Base Case Efficiency

To determine an appropriate base case against which to compare various candidate standard levels, DOE used the purchase-decision model described in section IV.F.1. For the base case, initially transformer purchasers are allowed to choose among the entire range of transformers at each design line.

During the negotiation process, ERAC subcommittee members noted that currently there are no transformers using ZDMH as a core material sold in the U.S. market. (ABB, Public Meeting Transcript, No. 91 at p. 276) Therefore, DOE screened out designs using this material in the base case selection. For higher efficiency levels, the LCC analysis samples from all design options identified in the engineering analysis.

Subcommittee members provided data on market share as a function of efficiency. For some design lines, the lower boundary of the price-efficiency curve produced in the engineering analysis is quite flat, so that the choice algorithm in the LCC analysis showed units being selected in the base case with efficiencies substantially higher than the current DOE minimum standard. DOE modified its approach so that the fraction of units selected in the base case at different efficiency levels is consistent with the provided market share data.

G. National Impact Analysis—National Energy Savings and Net Present Value Analysis

DOE's NIA assessed the national energy savings (NES) and the national NPV of total customer costs and savings that would be expected to result from amended standards at specific efficiency levels. (''Customer'' refers to purchasers of the product being regulated.)

To make the analysis more accessible and transparent to all interested parties, DOE used an MS Excel spreadsheet model to calculate the energy savings and the national customer costs and savings from each TSL. DOE understands that MS Excel is the most widely used spreadsheet calculation tool in the United States and there is general familiarity with its basic features. Thus, DOE's use of MS Excel as the basis for the spreadsheet models provides interested parties with access to the models within a familiar context. In addition, the TSD and other documentation that DOE provides during the rulemaking help explain the models and how to use them, and interested parties can review DOE's analyses by changing various input quantities within the spreadsheet.

DOE used the NIA spreadsheet to calculate the NES and NPV, based on the annual energy consumption and total installed cost data from the energy use characterization and the LCC analysis. DOE forecasted the energy savings, energy cost savings, product costs, and NPV of customer benefits for each product class for products sold from 2016 through 2045. The forecasts provided annual and cumulative values for all four output parameters. In addition, DOE analyzed scenarios that used inputs from the *AEO 2011* Low Economic Growth and High Economic Growth cases. These cases have higher and lower energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10–B of the NOPR TSD.

DOE evaluated the impacts of amended standards for distribution transformers by comparing base-case projections with standards-case projections. The base-case projections characterize energy use and customer costs for each product class in the absence of amended energy conservation standards. DOE compared these projections with projections characterizing the market for each product class if DOE were to adopt amended standards at specific energy efficiency levels (*i.e.*, the standards cases) for that class.

The tables below summarize all the major NOPR inputs to the shipments analysis and the NIA, and whether those inputs were revised for the proposed rule.

TABLE IV.2—INPUTS FOR THE SHIPMENTS ANALYSIS

Input	Preliminary analysis description	Changes for proposed rule
Shipments data	Third-party expert (HVOLT) for 2009	No change.

[30] Barnes. Determination Analysis of Energy Conservation Standards for Distribution Transformers. ORNL–6847. 1996.

TABLE IV.2—INPUTS FOR THE SHIPMENTS ANALYSIS—Continued

Input	Preliminary analysis description	Changes for proposed rule
Shipments forecast	2016–2045: Based on *AEO 2010*	Updated to AEO 2011.
Dry-type/liquid-immersed market shares	Based on EIA's electricity sales data and *AEO2010*.	Updated to AEO 2011.
Regular replacement market	Based on a survival function constructed from a Weibull distribution function normalized to produce a 32-year mean lifetime. Source: ORNL 6804/R1, *The Feasibility of Replacing or Upgrading Utility Distribution Transformers During Routine Maintenance,* page D–1.	No change.
Elasticities, liquid-immersed	For liquid-immersed transformers: • Low: 0.00 • Medium: −0.04 • High: −0.20	No change.
Elasticities, dry-type	For dry-type transformers: • Low: 0.00 • Medium: −0.02 • High: −0.20	No change.

TABLE IV.3—INPUTS FOR THE NATIONAL IMPACT ANALYSIS

Input	Preliminary analysis description	Changes for proposed rule
Shipments	Annual shipments from shipments model	No change.
Compliance date of standard	January 1, 2016	No change.
Base case efficiencies	Constant efficiency through 2044. Equal to weighted-average efficiency in 2016.	No change.
Standards case efficiencies	Constant efficiency at the specified standard level from 2016 to 2044.	No change.
Annual energy consumption per unit	Average rated transformer losses are obtained from the LCC analysis, and are then scaled for different size categories, weighted by size market share, and adjusted for transformer loading (also obtained from the LCC analysis).	No change.
Total installed cost per unit	Weighted-average values as a function of efficiency level (from LCC analysis).	No change.
Electricity expense per unit	Energy and capacity savings for the two types of transformer losses are each multiplied by the corresponding average marginal costs for capacity and energy, respectively, for the two types of losses (marginal costs are from the LCC analysis).	No change.
Escalation of electricity prices	*AEO 2010* forecasts (to 2035) and extrapolation for 2044 and beyond.	Updated the escalation of electricity prices forecast using AEO 2011.
Electricity site-to-source conversion	A time series conversion factor; includes electric generation, transmission, and distribution losses. Conversion varies yearly and is generated by DOE/EIA's National Energy Modeling System (NEMS) program.	Updated conversion factors from NEMS.
Discount rates	3% and 7% real	No change.
Present year	Equipment and operating costs are discounted to the year of equipment price data, 2010.	No change.

1. Shipments

DOE constructed a simplified forecast of transformer shipments for the base case by assuming that long-term growth in transformer shipments will be driven by long-term growth in electricity consumption. The detailed dynamics of transformer shipments is highly complex. This complexity can be seen in the fluctuations in the total quantity of transformers manufactured as expressed by the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), transformer quantity index. DOE examined the possibility of modeling the fluctuations in transformers shipped using a bottom-up model where the shipments are triggered by retirements and new capacity additions, but found that there were not sufficient data to calibrate model parameters within an acceptable margin of error. Hence, DOE developed the transformer shipments forecast assuming that annual transformer shipments growth is equal to forecasted growth in electricity consumption as given by the *AEO 2011* forecast up to the year 2035. For the years from 2036 to 2045, DOE extrapolated the *AEO 2011* forecast with the growth rate of electricity consumption from 2025 to 2035. The model starts with an estimate of the overall growth in transformer capacity and then estimates shipments for particular design lines and transformer sizes using estimates of the recent market shares for different design and size categories. Chapter 9 provides a detailed description of how DOE conducted its shipments forecasts.

EEI suggested that the shipment projections are overly optimistic and should be closer to a flat line of growth. (EEI, No. 29 at p. 9) The historical shipments data based on the BEA's quantity index data for power and distribution transformers show a

relatively flat trend between the late 1970s and 2007. The data show a sharp increase in 2008, a higher-than-average level in 2009, and a steep plunge in 2010. This recent trend apparently reflects purchasers stocking up on transformers in advance of the standards that took effect in 2010. Given this unusual market situation, DOE believes that holding future shipments at the 2010 level would be unrealistic. For the NOPR, DOE's base case forecast shows shipments gradually returning to the level of 2008 by the end of the forecast period.

Commenting on the preliminary analysis, NEMA noted that in some markets, liquid-immersed and medium-voltage dry-type transformers compete against one another, and for some applications, liquid-immersed units have additional costs for liquid containment or fire protection. NEMA encouraged DOE to consider whether higher prices for liquid-immersed units due to standards might cause users to shift to dry-type transformers. (NEMA, No. 13 at p. 7) ABB said that they have not observed a shift in market share between equipment classes as a result of current regulations, but they asked that any new regulation be analyzed as to its potential impact in shifting demand between equipment classes. (ABB, No. 14 at p. 19)

In principle, the appropriate way to address the probability that a customer switches to a different product class in response to an increase in the price of a specific product is to estimate the cross-price elasticity of demand between competing classes. To estimate this elasticity, DOE would need historical data on the shipments and price of the liquid-immersed and medium-voltage dry-type transformers. The shipments data at that level of disaggregation is available only for two years (2001 and 2009), which is not sufficient to support the estimation of cross-price elasticity of liquid-immersed distribution transformers. Thus, for the NOPR DOE did not estimate potential switching from liquid-immersed to dry-type transformers. DOE requests data that would allow it to estimate such switching for the final rule.

Some stakeholders expressed concern that higher prices due to new standards will increase refurbishing of transformers, which would reduce purchase and shipments of new transformers. (EEI, Public Meeting Transcript, No. 34 at p. 249; NEEA, No. 11 at p. 9; HI, No. 23 at p. 13) NEMA commented that the analysis should consider the replace versus refurbish decision for each considered standard level. (NEMA, No. 13 at pp. 7, 9) ABB commented that it has not observed increased refurbishing with the current regulation since January 1, 2010, but it believes new regulations may well increase the use of rebuilt transformers. (ABB, No. 14 at p. 19) NRECA said that some of its members are already making greater efforts to maintain and refurbish older units rather than purchase costlier new, more efficient units. (NRECA, No. 31 and 36 at p. 4)

To capture the customer response to transformer price increase, DOE estimated the customer price elasticity of demand. Although the general trend of transformer purchases is determined by increases in generation, utilities conceivably exercise some discretion in how much transformer capacity to buy—the amount of ''over-capacity'' to purchase. The ratio of transformer capacity to load varies according to economic considerations, namely the price of transformers, and the income generated by each unit of capacity purchased (essentially the price of electricity). When transformer costs are low, utilities may increase their investment in capacity in order to economically meet future increases in demand, and they will be more likely to do so when returns, indicated by electricity prices, are high. Any decrease in sales induced by an increase in the price of distribution transformers is due to a decrease in this ratio. In DOE's estimation of the purchase price elasticity, it used a logit function to characterize the utilities' response to the price of a unit capacity of transformer. The functional form captures what can be called an average price elasticity of demand with a term to capture the estimation error, which accounts for all other effects. Technically, the price elasticity should therefore account for any decrease in the shipments due to a decision on the customer's part to refurbish transformers as opposed to purchasing a new unit. DOE's approach is described in chapter 9 of the NOPR TSD.

During the negotiated rulemaking, DOE heard from many stakeholders that there is a growing potential for utilities to repair failed transformers and return them to service for less than the cost of a purchasing a new transformer. Some manufacturers commented that if the cost of a new transformer increased by 20 percent utilities may refurbish rather than purchase new equipment to replace failed equipment. (ABB, Public Meeting Transcript, No. 95 at p. 100) DOE received a market potential study from AK Steel stating that the replacement market could represent up to 80 percent of the liquid-immersed market over the next 15 years and that utilities purchasing replacement equipment would consider refurbishing failed units instead of purchasing new equipment. (AK, Public Meeting Transcript, No. 95 at p. 101) DOE received comment from committee members that a small number of municipal utilities were already purchasing refurbished equipment as part of their normal day-to-day operations. (APPA, Public Meeting Transcript, No. 95 at p. 169) On the other hand, PG&E stated that the risks involved with using refurbished equipment (*e.g.,* shorter lifetimes, shorter warrantee, inconsistent equipment quality) give this option limited appeal to larger investor-owned utilities. (PG&E, Public Meeting Transcript, No. 95 at p. 172) DOE acknowledges that uncertainty exists regarding the issue of refurbishing vs. replacement. However, it did not receive data that provided a reasonable basis for changing the analysis used for the NOPR. DOE intends to further investigate this issue for the final rule. Toward that end, DOE request further information that would allow it to quantify the likely extent of refurbishment at different potential standard levels.

2. Efficiency Trends

DOE did not include any base case efficiency trends in its shipments and national energy savings models. AEO forecasts show no long term trend in transmission and distribution losses. DOE estimates that the probability of an increasing efficiency trend and the probability of a decreasing efficiency trend are approximately equal, and therefore used a zero trend in base case efficiency. DOE seeks further comment on its decision to use frozen efficiencies for the analysis period. Specifically, DOE would like comments on additional sources of data on trends in efficiency improvement.

3. Equipment Price Forecast

As noted in section IV.F.2, DOE assumed no change in transformer prices over the 2016–2045 period. In addition, DOE conducted sensitivity analysis using alternative price trends. Based on PPI data for electric power and specialty transformer manufacturing, DOE developed one forecast in which prices decline after 2010, and one in which prices rise. These price trends, and the NPV results from the associated sensitivity cases, are described in Appendix 10–C of the NOPR TSD.

4. Discount Rate

In calculating the NPV, DOE multiplies the net savings in future

years by a discount factor to determine their present value. For today's NOPR, DOE estimated the NPV of appliance consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[31] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

5. Energy Used in Manufacturing Transformers

FPT stated that DOE should account for the additional energy needed to produce more efficient transformers, such as energy use associated with working with higher-grade core steels. (FPT, No. 27 at p. 4) HI and SC made similar comments. (HI, No. 23 at p. 7; SC, No. 22 at p. 3) In response, DOE notes that EPCA directs DOE to consider the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard when determining whether a standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE interprets this to include energy used in the generation, transmission, and distribution of fuels used by appliances or equipment. In addition, DOE is evaluating the full-fuel-cycle measure, which includes the energy consumed in extracting, processing, and transporting primary fuels. DOE's current accounting of primary energy savings and the full-fuel-cycle measure are directly linked to the energy used by appliances or equipment. DOE believes that energy used in manufacturing of appliances or equipment falls outside the boundaries of ''directly'' as intended by EPCA. Thus, DOE did not consider such energy use in the NIA.

H. Customer Subgroup Analysis

In analyzing the potential impacts of new or amended standards, DOE evaluates impacts on identifiable groups (*i.e.,* subgroups) of customers that may be disproportionately affected by a national standard. For this rulemaking, DOE identified purchasers of vault-installed transformers (mainly utilities concentrated in urban areas) as subgroups that could be disproportionately affected, and examined the impact of proposed standards on these groups using the methodology of the LCC and PBP analysis.

Kentucky Association of Electric Cooperatives, Inc. (KAEC) stated that rural electric cooperatives should be analyzed as a customer subgroup in the LCC subgroup analysis because they will face disproportionate costs for any amended efficiency standards. KAEC stated that rural electric cooperatives typically are loaded at only 25 percent, not the 50 percent loading assumed in the test procedure. (KAEC, No. 4 at p. 2) DOE's estimate of average root mean square (RMS) loading for a 50 kVA pad-mounted transformer for the national sample is approximately 35 percent. For rural electric cooperatives DOE used the estimate provided by KAEC to lower the average loading for rural customers, as described in section IV.E of this document.

Several interested parties commented that it is important for DOE to take into consideration the problem that may arise in installing larger transformers in space-constrained situations. HI commented that DOE needs to do more analysis on the size constraints for submersible and vault type transformers. (HI, No. 23 at p. 13) ComEd stated that for street and building vaults, larger transformers potentially could cause severe problems during replacement because of equipment openings, operating clearances, and the loading capacity of floors and elevators. It stated that: (1) Existing building vaults typically have only a few inches of clearance; and (2) larger transformers may not be able to be maneuvered through building hallways or may exceed the weight limitations of building elevators and floors. It added that although a slightly larger transformer would not create a space issue for street/sidewalk vaults, a larger transformer may violate certain company operating clearances inside the vault, and possibly be deemed a safety issue. (ComEd, No. 24 at p. 2) PHI noted that the existing manholes provided for subsurface, subway, and network transformers would have to be enlarged to install a larger unit, which requires time and additional costs. (PHI, No. 26 and 37 at p. 1)

For the NOPR, DOE evaluated vault-installed transformers represented by design lines 4 and 5 as a customer subgroup. DOE examined the impacts of larger transformer volume with regard to costs for vault enlargement. DOE assumed that if the volume of a unit in a standard case is larger than the median volume of transformer designs for the particular design line, a vault modification would be warranted. To estimate the cost, DOE compared the difference in volume between the unit selected in the base case against the unit selected in the standard case, and applied fixed and variable costs. In the 2007 final rule, DOE estimated the fixed cost as $1,740 per transformer and the variable cost as $26 per transformer cubic foot.[32] For today's notice, these costs were adjusted to 2010$ using the chained price index for non-residential construction for power and communications to $1854 per transformer and $28 per transformer cubic foot. DOE considered instances where it may be extremely difficult to modify existing vaults by adding a very high vault replacement cost option to the LCC spreadsheet. Under this option, the fixed cost is $30,000 and the variable cost is $733 per transformer cubic foot.

The customer subgroup analysis is discussed in detail in chapter 11 of the NOPR TSD.

I. Manufacturer Impact Analysis

1. Overview

DOE performed a manufacturer impact analysis (MIA) to estimate the financial impact of amended energy conservation standards on manufacturers of distribution transformers and to calculate the impact of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model with inputs specific to this rulemaking. The key GRIM inputs are data on the industry cost structure, product costs, shipments, and assumptions about markups and conversion expenditures. The key output is the industry net present value (INPV). Different sets of shipment and markup assumptions (scenarios) will produce different results. The qualitative part of the MIA addresses factors such as product characteristics, impacts on particular sub-groups of firms, and important market and product trends. The complete MIA is outlined in Chapter 12 of the NOPR TSD.

[31] OMB Circular A–4 (Sept. 17, 2003), section E, ''Identifying and Measuring Benefits and Costs. Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html.*

[32] See section 7.3.5 of the 2007 final rule TSD, available at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/pdfs/transformer_fr_tsd/chapter7.pdf*).

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the distribution transformer industry, which includes a top-down cost analysis of manufacturers used to derive preliminary financial inputs for the GRIM (*e.g.,* sales general and administration (SG&A) expenses; R&D expenses; and tax rates). DOE used public sources of information, including company Securities and Exchange Commission (SEC) 10–K filings, Moody's company data reports, corporate annual reports, the U.S. Census Bureau's Economic Census, and Hoover's reports.

In Phase 2 of the MIA, DOE prepared an industry cash-flow analysis to quantify the impacts of a new energy conservation standard. In general, more stringent energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Create a need for increased investment, (2) raise production costs per unit, and (3) alter revenue due to higher per-unit prices and possible changes in sales volumes.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with a representative cross-section of manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.I.4 for a description of the key issues manufacturers raised during the interviews.

Additionally, in Phase 3, DOE evaluates sub-groups of manufacturers that may be disproportionately impacted by standards or that may not be accurately represented by the average cost assumptions use to develop the industry cash-flow analysis. For example, small manufacturers, niche players, or manufacturers with cost structures that largely differ from the industry average could be more negatively affected.

For the MIA, DOE grouped the cash flow results for design lines made by the same sets of manufacturers serving the same markets in order to assess the impacts of amended energy conservation standards with more granularity. DOE separately analyzed the industries of three transformer ''superclasses''—liquid-immersed, medium-voltage dry-type, and low-voltage dry-type—based on differences in the tooling and equipment, product designs, customer types, and characteristics of the markets in which they operate. The Department considered small manufacturers as a separate subgroup because they may be disproportionately affected by standards. DOE applied the small business size standards published by the Small Business Administration (SBA) to determine whether a company is considered a small business 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. To be categorized as a small business under NAICS 335311(''Power, Distribution and Specialty Transformer Manufacturing''), a distribution transformer manufacturer and its affiliates may employ a maximum of 750 employees. The 750-employee threshold includes all employees in a business's parent company and any other subsidiaries. Based upon this classification, DOE identified at least 31 small distribution transformer manufacturers that qualify as small businesses. The distribution transformer small manufacturer sub-group is discussed in Chapter 12 of the TSD and in section VI.B.1 of today's notice.

2. Government Regulatory Impact Model

DOE uses the GRIM to quantify the standards-induced changes in cash flow that result in a higher or lower industry value. The GRIM analysis uses a standard, annual cash-flow analysis that incorporates products costs, markups, shipments, and industry financial information as inputs, and models changes in costs, investments, and manufacturer margins that would result from new and amended energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning with the base year of the analysis, 2011, and continuing to 2045. DOE calculates INPVs by summing the stream of annual discounted cash flows during this period, using a discount rate of 7.4 percent for liquid immersed transformers, 9 percent for medium-voltage dry-type transformers, and 11.1 percent for low-voltage dry-type transformers. The difference in INPV between the base case and a standards case represents the financial impact of the amended standard on manufacturers. DOE's discount rate estimate was derived from industry financials and then modified according to feedback during manufacturer interviews.

DOE typically presents its estimates of industry impacts by groups of the major equipment types served by the same manufacturers. For the distribution transformer industry, DOE presents its estimates of industry impacts for each superclass. The GRIM results are shown in section V.B.2.a. Additional details about the GRIM can be found in Chapter 12 of the TSD.

3. GRIM Key Inputs

a. Manufacturer Production Costs

Manufacturing a higher-efficiency product is typically more expensive than manufacturing a baseline product. The changes in the MPCs of the analyzed products can affect the revenues, gross margins, and cash flow of the industry, making these product cost data key GRIM inputs for DOE's analysis.

During the engineering analysis, DOE used transformer design software to create a database of designs spanning a broad range of efficiencies for each of the representative units. This design software generated a bill of materials. The software also provided information pertaining to the labor necessary to construct the transformer, including the number of turns in the windings and core dimensions, including stack height, which enabled DOE to estimate per unit labor costs. The Department then applied markups to allow for scrap, handling, factory overhead, and non-production costs to estimate the manufacturer selling price.

These designs and their MSPs are subsequently inputted into the LCC customer choice model. For each CSL and within each design line, the LCC model uses a Monte Carlo analysis and criteria described in section F to select a subset of all the potential designs options (and associated MSPs). This subset is meant to represent those designs that would actually be shipped in the market under various standard levels. DOE inputted into the GRIM the weighted average cost of the designs selected by the LCC model and scaled those MPCs to other selected capacities in each design line's KVA range.

b. Base-Case Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of these values by capacity and design line. Changes in sales volumes and product mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment forecasts from 2011 to 2045, the end of the analysis period. See Chapter 9 of the TSD for additional details.

c. Product and Capital Conversion Costs

Amended energy conservation standards will cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. For the MIA, DOE classified these conversion costs

into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with the new or amended energy conservation standard. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new product designs can be fabricated and assembled.

Several manufacturers commented on the capital and product conversion costs that would be necessary to meet particular efficiency levels. Power Partners stated that any new standards would require additional retooling and investment (Power Partners, Public Meeting Transcript, No. 19 at p. 1). Howard Industries commented that DOE should consider the full impact of capital investments for higher efficiency designs, such as symmetric core designs, which would require large capital investments and patent fees, and amorphous core designs, which would require large capital investments for additional floor space, laminators, cutters, stackers, encapsulation equipment, and annealing ovens. (Howard Industries, Public Meeting Transcript, No. 23 at p. 10–11) Additionally, Federal Pacific indicated that manufacturers who do not currently have the experience and resources needed to manufacture amorphous cores themselves will have to spend a significant amount of money in certifying amorphous core transformers to the IEEE C57 short circuit requirements if DOE efficiency levels necessitate the use of amorphous steel in core production. (Federal Pacific, Public Meeting Transcript, No. 27 at p. 3)

DOE recognizes manufacturers would incur conversion costs to modify their plants and equipment to produce higher efficiency distribution transformers. DOE explicitly considers these expenditures it in its GRIM analysis; the following describes the department's methodology for estimating potential conversion costs for each TSL.

For capital conversion costs, DOE prepared bottom-up estimates of the costs required to meet standards at each TSL for each design line. To do this, DOE used equipment cost estimates provided by manufacturers and equipment suppliers, an understanding of typical manufacturing processes developed during interviews and in consultation with subject matter experts, and the properties associated with different core and winding materials. Major drivers of capital conversion costs include changes in core steel type (and thickness), core weight, core stack height, and core construction techniques, all of which are interdependent and can vary by efficiency level. DOE uses estimates of the core steel quantities needed by steel type for each TSL, and then most likely core construction techniques, to model the additional equipment the industry would need to meet the efficiencies embodied by each TSL.

For the liquid-immersed sector, conversion costs are entirely driven at each TSL by the need of the industry to expand capacity for amorphous production. Based on interviews with manufacturers and equipment suppliers, DOE assumed an amorphous production line with 1,200 tons of annual capacity would cost $950,000. This figure includes costs associated with an annealing oven, core cutting machine, lacing tables and other miscellaneous equipment. As the increasing stringency of the TSLs drive amorphous adoption, conversion costs increase.

For the low-voltage and medium-voltage dry-type market, DOE took two approaches to estimate capital conversion costs. First, DOE used an industry feedback approach. The Department interviewed manufacturers and industry experts about the capital conversion costs for design lines at increasing efficiency levels, aggregated the conversion cost feedback, and market-shared weighted the feedback to determine likely industry capital conversion costs. For the second approach, DOE performed a bottoms-up analysis of conversion costs based on core steel selections forecasted by the LCC and production equipment costs (a more detailed description of the analysis can be found in chapter 12 of the TSD). The two approaches yielded results with similar orders of magnitude. For those levels that do not require amorphous wound cores, the capital costs are largely driven by the need to modify existing or purchase new core cutting machines and associated equipment and tooling. This need arises as increasingly stringent TSLs require thinner steels, heavier cores, and mitered core construction techniques, all of which slow throughput and reduce existing capacity. At those TSLs where amorphous cores become the dominant steel of choice, DOE used the same amorphous core production line output and cost assumptions as discussed above for the liquid immersed market.

As it relates to product conversion costs, DOE understands the production of amorphous cores requires unique expertise and equipment. For manufacturers without experience with amorphous steel, a standard necessitating the use of the material would require the development or the procurement of the technical expertise necessary to produce cores. Because amorphous steel is extremely thin and brittle after annealing, materials management, safety measures, and design considerations that are not associated with non-amorphous steels would need to be implemented.

For the liquid immersed distribution transformers, because of the industry's relative inexperience with amorphous technology, DOE estimated product conversion costs would equal two times annual industry R&D expenses for those TSLs where a majority of the market would be expected to transition to amorphous material. These one-time expenditures account for the design, engineering, prototyping, and other R&D efforts the industry would have to undertake to move to a predominately amorphous market. At TSL 1, the only TSL which did not show a clear move to amorphous technology, DOE estimated product conversion costs of one times industry annual R&D.

In the low-voltage and medium-voltage dry-type market, DOE aggregated estimates of product conversion costs from manufacturers that were gathered during interviews and scaled those estimates to represent the market share of those not interviewed. Again, for those levels that indicated a clear shift to amorphous (or, in the case of LVDT, potentially wound cores), DOE assumed one-time product conversion costs equal to two times annual industry R&D expenses.

In conclusion, both capital and product conversion costs are key inputs to the GRIM and directly impact the change in INPV that results from new standards. DOE assumed that all conversion-related investments occur between the year of publication of the final rule [33] and the year by which manufacturers must comply with the standard (2016). DOE's estimates of conversion costs can be found in section V.B.2.a of today's notice and a detailed description of the estimation methodology can be found in TSD chapter 12.

d. Standards Case Shipments

As discussed in section F, DOE modeled standard case shipments based on what units the LCC customer choice model selected at each efficiency level. DOE's shipments analysis includes an elasticity factor based on the potential

[33] *I.e.,* 2012.

for transformer purchasers to elect to refurbish rather than replace failed transformers as the purchase price increases. The shipments analysis is discussed in more detail in chapter 9 of the TSD.

e. Markup Scenarios

As discussed above, manufacturer selling prices include direct manufacturing production costs (*i.e.,* labor, material, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied markups to the MPCs estimated in the engineering analysis and selected in the LCC for each design line and efficiency level. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin percentage markup scenario, and (2) a preservation of operating profit markup scenario. These scenarios lead to different markups values, which, when applied to the inputted MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. Based on publicly available financial information for manufacturers of distribution transformers and comments from manufacturer interviews, DOE assumed the non-production cost markup—which includes SG&A expenses; R&D expenses; interest; and profit—to be 1.25 for distribution transformers. Because this markup scenario assumes that manufacturers would be able to maintain their gross margin percentage markups as production costs increase in response to an energy conservation standard, it represents a high bound to industry profitability under an energy conservation standard.

In the preservation of operating profit scenario, DOE adjusted the manufacturer markups in the GRIM at each TSL to yield approximately the same earnings before interest and taxes in the standards case in the year after the compliance date of the amended standards as in the base case. Under this scenario, as the cost of production and the cost of sales go up, DOE assumes manufacturers are generally required to reduce their markups to a level that maintains base case operating profit in absolute dollars. Therefore, operating margin in percentage terms is reduced between the base case and standards case. This markup scenario represents a low bound to industry profitability under an energy conservation standard.

4. Discussion of Comments

During the April 2011 public meeting, interested parties commented on the assumptions and results of the preliminary TSD. Oral and written comments discussed several topics, including conversion costs, material availability, amorphous steel, and symmetric core technology. DOE addresses these comments below.

a. Material Availability

Manufacturers noted that the availability of raw materials is particularly a concern at higher efficiency levels, where transformer designs would be based upon a very limited selection of steel types. Hammond stated that the supply of high grade steels, such as domain-refined steels, would not be sufficient to meet demand if the efficiency standard forces all designs to use that type of steel. Hammond also stated that shortages could occur if levels are pushed anywhere beyond the current level. (Hammond, Public Meeting Transcript, No. 3 at p. 4 and 6) According to EEI, scarcity of raw materials would be especially problematic if standards are raised beyond CSL 2 for most design lines. Also, EEI noted that if the efficiency levels selected are so high that they can only be met with one or two design options, manufacturers would be faced with limited choices in suppliers and higher costs, and customers would be faced with limited choices in designs and with higher prices. (EEI, Public Meeting Transcript, No. 29 at p. 1 and 4) Furthermore, as noted by KAEC, the transformer industry may not be able to respond to demand under emergency situations if increased efficiency levels reduce the number of options available for core steels and those steels are in limited supply or subject to long lead times. (KAEC, Public Meeting Transcript, No. 4 at p. 3) Southern Company also noted that an improved economy would increase demand for transformers and exacerbate the shortage of core steels necessary to build higher efficiency transformers. (Southern Company, Public Meeting Transcript, No. 22 at p. 1) Many manufacturers expressed concerns about the limited availability of raw materials, especially higher efficiency electrical steels. Power Partners commented that: (1) There is a limited global supply of core steels in grades better than M3, (2) the domestic supply of M2 steel is not enough to support 100 percent of all liquid-immersed transformer production, and (3) grades of grain oriented electrical steel better than M2 (*e.g.,* ZDMH) is in limited supply and only available from a foreign supplier. (Power Partners, Public Meeting Transcript, No. 19 at p. 4) Howard Industries also commented on the limited availability of ZDMH and M2 steel, stating that ZDMH steel is only produced in Japan and that production of M2 steel by AK Steel and Allegheny Ludlum (the two primary suppliers of M2) is unlikely to increase. (Howard Industries, Public Meeting Transcript, No. 23 at p. 10–11)

The use and availability of amorphous steel, in particular, is a major concern in the distribution transformer industry. DOE understands that amorphous steel is currently produced by only two companies in the world (Metglas and AT&M), both of which are foreign-owned and one of which only supplies the Chinese market. Southern Company argued that a standard level that requires the use of amorphous steel could cause domestic suppliers of grain-oriented steel to go out of business or force them to lay off employees. (Southern Company, Public Meeting Transcript, No. 22 at p. 1) Also, Howard Industries commented that, because production in China is not exported, amorphous steel will likely need to be supplied by U.S. manufacturers. (Howard Industries, Public Meeting Transcript, No. 23 at p. 10–11) However, Metglas stated that AT&M (the Chinese amorphous supplier) has announced aggressive expansion in its plants and is expected to export at some point in the future. (Metglas, Public Meeting Transcript, No. 34 at p. 259) Nevertheless, due to the limited current supply of amorphous steel, Federal Pacific suggested that DOE should consider whether the increased demand for amorphous steel from any proposed standard levels could be met by the compliance date. (Federal Pacific, Public Meeting Transcript, No. 27 at p. 2–3)

Manufacturers suggested several analyses which DOE should consider performing in order to determine core steel availability. ABB recommended that DOE should project the consumption of all grades of core steels for each efficiency level in the analysis so that the industry can assess the underlying impact on supply. (ABB, Public Meeting Transcript, No. 14 at p.

17) Schneider Electric recommended that DOE should work with the steel industry to gain insights into core steel availability. (Schneider, Public Meeting Transcript, No. 18 at p. 9) NEMA recommended that DOE should discuss core steel supply with large and small manufacturers, and that DOE should also forecast the supply and cost of steel at each CSL and TSL considered in the analysis. (NEMA, Public Meeting Transcript, No. 13 at p. 7–8) Also, Berman Economics commented that the shape of the material supply curve is more relevant than the current quantity of supply. Once demand increases, the market would respond by supplying more steel, according to Berman Economics. (Berman Economics, Public Meeting Transcript, No. 34 at p. 260)

DOE agrees with comments that standards could shift the mix and quantities of core steels demanded by transformer manufacturers and could alter the market dynamics among core steel and transformer manufacturers. Therefore, DOE interviewed many players in the core steel supply chain. DOE investigated core steel availability with large and small distribution transformers manufacturers, core manufacturers, and steel suppliers. DOE discussed several topics during these interviews, including market capacity for each type of core steel, prospects for expansion, barriers to obtaining those steels, and impacts on competition.

Based on its engineering analysis, DOE recognizes that some high efficiency steels are substantially more cost-effective at higher TSLs than lower-grade or traditional steels. Furthermore, the most stringent TSLs can only be met with certain core steels, typically amorphous, depending on the design line. Based on its interviews and market research, DOE understands these steels are currently produced in limited quantities by a small handful of suppliers, some of which do not produce steels domestically.

To better understand the impact of standards on materials availability, DOE conducted an extensive analysis of the core steel market, as discussed in TSD appendix 3A.

To evaluate the impacts of standards on the core steel market and transformer manufacturers, DOE first estimated the core steel consumption of transformer manufacturers in 2016 (the first year of required compliance with the proposed standard) in the base case and the standards cases. To do this, DOE had to evaluate the designs selected by the LCC customer choice model at each EL for each design line. This model estimated the distribution of designs that would be selected at any given standard level. Key parameters of this sample of selected designs, such as the distribution of core steel types and average core weights by steel type, were critical inputs into the steel demand analysis. DOE found the average core weight of the designs selected for each design line's representative unit at each efficiency level.

Next, the Department used the .75 scaling rule to extrapolate these average core weights to those units forecast to be shipped within a design line but not at the KVA range of the representative unit that is directly analyzed in the engineering and LCC analyses. For example, DOE extrapolated the core weight of the 50 kVA representative unit for DL1 to a 100 kVA unit in DL1. This implicitly assumes that the distribution of core steel types used in transformers remains constant within the kVA range represented by each design line. Although the calculation of core weights for units at the extremes of a kVA range may benefit from an adjusted scaling rule or intermediate design lines, time constraints have limited the extent of the analysis. However, for the most part, the .75 scaling rule is a suitable method for scaling across kVAs.

Using the shipments analysis, which projected kVA demand by design line and capacity, DOE calculated total core steel demand from transformers covered by this rule. While DOE recognizes the core steel market is global in scope, its projections include only core steel used in distribution transformers covered by this rulemaking for use in the U.S. [In response to Southern Company's comment regarding additional demand that may come from an improved economy, DOE notes that the shipment analysis is based on the EIA forecast of economic growth throughout the analysis period, and thus accounts for higher-the-current rates of economic growth.]

In reference to the comments summarized above, based on industry research and the core steel analysis, DOE agrees with Power Partners that domestic steel suppliers do not currently have the capacity to supply the entire distribution transformer market with M2, nor does DOE believe domestic suppliers could cost-effectively produce enough M2 to do so because the nature of silicon steel production limits M2 output to one pound for every four pounds of M3. Due to this manufacturing constraint, if M3 was not able to be used due to standards, steel manufacturers would be unlikely to produce M2 at levels potentially demanded by standards, which could create a tipping point at which the market must move to amorphous by default.

With respect to amorphous demand and capacity, at this time, DOE understands there is only one credible supplier to the U.S. market of high-grade amorphous core steel. (Although there is one notable Chinese supplier with substantial capacity, DOE understands the company has no history of exporting the material and serves only China's rapidly growing domestic market at this time. Despite Metglas' comment above that this supplier is expected to export soon, several manufacturers expressed skepticism at that possibility in interviews and also noted the quality of the steel was poor. At this time, DOE has little reason to believe the company will commence exporting substantial amounts of high quality amorphous steel in the near future.) Based on publically available information, DOE estimates the domestic supplier of amorphous metal has a global capacity of approximately 100,000 metrics tons per year, 40 percent of which is U.S. based. DOE estimates less than 10,000 tons are currently used for covered US transformers. Notably, the company has substantially ramped up capacity in a relatively short time, growing from a 30,000-tons-per-year level in 2005 and lending credence to the notion that its supply can escalate quickly. The amorphous supplier is a subsidiary of a large conglomerate and has commented that it has the financial resources to expand.

While DOE believes the company could substantially grow capacity beyond its current levels in time for a 2016 compliance date, there still exists a significant risk of supply constraints, given the magnitude of the surge in amorphous demand that could potentially be compelled by TSL 2 and above. It is worth noting that this is a global market (indeed, as discussed, DOE estimates less than 10 percent of all amorphous core from this supplier is used in U.S. transformers). Therefore, even if the company could increase capacity substantially, it is unlikely, according to most projections, that demand would remain flat in markets receiving the other 90 percent of this supplier's business.

Beyond potential capacity constraints, DOE is also concerned about the competitive impact—among both steel manufacturers and distribution transformer manufacturers—of a standard that threatened to shift most of the market to amorphous steel. In highly competitive markets, standard economic theory dictates that higher prices would encourage additional suppliers and

production to come online, bringing prices back to a long-run equilibrium. In the very long run, that may be true here. However, the highly sophisticated nature of amorphous ribbon production, which is based on extensive know-how gained over years of production and high fixed costs, creates barriers to entry that, while not legal (*i.e.,* patents) in nature, suggest there is a significant risk that there will be no alternative sources of supply by the compliance date or even in the few years beyond it. Therefore, DOE is concerned about the lack of alternative amorphous suppliers and the virtual monopoly supplier that would likely exist in the short term at higher TSLs, particularly given the engineering constraints on the economic production of M2 and very limited supply of ZDMH.

b. Symmetric Core Technology

Several stakeholders commented on the costs that may be associated with the implementation of symmetric core technology. Howard Industries stated that symmetric core designs would require large capital investments and patent fees. (Howard Industries, Public Meeting Transcript, No. 23 at p. 10–11) Conversely, NEEA stated that capital investments for the technology are low according to symmetric core manufacturers (NEEA, Public Meeting Transcript, No. 11 at p. 4). Furthermore, HVOLT argued that, although there may be specific patents with different kinds of construction, patents fundamentally related to core configurations should have expired by now given that symmetric core technology was patented in the 1930s. (HVOLT, Public Meeting Transcript, No. 34 at p. 49)

Symmetric core manufacturers commented on the benefits of symmetric core technology. Hex Tec noted that the equipment used to produce symmetric wound cores is significantly less expensive than flat stacked steel equipment for the same size and the labor production times are lower. (Hex Tec, Public Meeting Transcript, No. 34 at p. 52) Furthermore, according to Hex Tec, intellectual property should not be a concern because there are a number of symmetric core designs available and therefore plenty of variance in design. (Hex Tec, Public Meeting Transcript, No. 34 at p. 49) Hex Tec has also submitted a letter from the Vice President of Research & Development at Metglas which indicates that Hex Tec's core winding machine for amorphous symmetric core designs can be easily scaled for commercialization. (Hex Tec, Public Meeting Transcript, No. 35 at p. 11–14)

DOE did not explicitly analyze symmetric core as a design option for consideration in the engineering. Therefore, symmetric core construction was not considered in the MIA.

c. Patents Related to Amorphous Steel Production

Some manufacturers were concerned about patents on amorphous steel production. ASAP has questioned whether or not there are any patent issues that exist for amorphous manufacturers entering the market. (ASAP, Public Meeting Transcript, No. 34 at p. 262) However, according to Metglas, the basic amorphous patent expired in 1999, so barriers to entry are based more on know-how than on patents. (Metglas, Public Meeting Transcript, No. 34 at p. 262)

Because there are no more patents that create a barrier to entry in the production of amorphous steel, DOE did not consider patents in its analysis of amorphous steel production capacity. However, DOE did consider the technical barriers that exist and accounted for the engineering and R&D investment necessary to begin production.

5. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 65 percent of liquid-immersed transformer sales, 75 percent of medium-voltage dry-type transformer sales, and 30 percent of low-voltage dry-type transformer sales. These interviews were in addition to those DOE conducted as part of the engineering analysis. The information gathered during these interviews enabled DOE to tailor the GRIM to reflect the unique financial characteristics of the distribution transformer industry. All interviews provided information that DOE used to evaluate the impacts of potential new and amended energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels.

During the manufacturer interviews, DOE asked manufacturers to describe their major concerns about this rulemaking. The following sections describe the most significant issues identified by manufacturers. DOE also includes additional concerns in chapter 12 of the NOPR TSD.

a. Conversion Costs and Stranded Assets

For manufacturers of distribution transformers, liquid-immersed, medium-voltage dry-type, and low-voltage dry-type, conversion costs and stranded assets are a major concern. All manufacturers stated that efficiency levels that require the use of amorphous steel would sharply increase conversion costs. Due to the thickness and brittleness of amorphous steel, unique production processes and new material handling processes must be applied. Manufacturers noted that they would need to make extensive capital investments in amorphous core production equipment, including core cutting machines, annealing ovens, and lacing tables.

Dry-type manufacturers also stated that a standard that moves the industry to wound cores would also greatly increase conversions costs. Since the vast majority of LVDT and MVDT manufacturers produce stacked cores, a move to wound cores would lead to extensive stranded assets. In some cases, manufacturers may consider purchasing prefabricated cores rather than modifying their facilities to produce wound cores due to the extensive conversion costs.

Additionally, dry-type manufactures stated that a revised standard that does not require amorphous steel or wound core designs could still lead to capital conversion costs. As the standard increases, manufacturers are likely to use higher grade steels for core production. Because high grade steels tend to be thinner, additional Georg machines, core assembly lines and workstations, custom miter cutters, and panel boards may be needed in order to maintain existing throughput levels.

Some manufacturers mentioned that stranded assets may also be an issue when equipment needs to be retired and/or replaced if it cannot be repurposed for higher efficiency designs. DOE accounted for stranded assets in the GRIM.

b. Shortage of Materials

The availability of higher efficiency grain-oriented electrical steels is a key issue for all manufacturers of distribution transformers. Manufacturers stated that there is currently a limited supply of M4, M3, M2, ZDMH, H–0 DR, and SA1 amorphous steels on the market and manufacturers expressed concern that higher standards may increase both demand and prices. Of these steels, M4 and M3 steels are currently the most widely produced, with suppliers such as AK Steel, Allegheny Ludlum, ThyssenKrupp, Nippon, JFE, Wuhan, Novolipetsk, Posco, ArcelorMittal, Orb, Baosteel, Stalproduct, Angang, and Arcelor/Hunan. However, as the grade of grain-oriented electrical steel improves, its availability decreases. M2 is a higher grade than M3 but it is produced by fewer suppliers, such as

AK Steel, Allegheny Ludlum, ThyssenKrupp, Nippon, and JFE. The availability of deep domain-refined steel such as ZDMH, H–0 DR, and SA1 amorphous is even more limited. H–0 DR is only produced by Nippon, JFE, AK Steel, Posco, and Baosteel, and ZDMH is only produced by Nippon. Amorphous steel is only produced by Hitachi (MetGlas) and AT&M, but AT&M only supplies the Chinese market. If efficiency levels are set so high that only amorphous can be used, then domestic manufacturers may be subject to monopolistic pricing from suppliers.

Manufacturers further stated that, in addition to being in limited supply, higher efficiency steels are also: (1) More expensive, (2) subject to tariffs when imported from a foreign supplier, (3) subject to long lead times for both domestic and international suppliers, and (4) difficult to obtain for manufacturers that do not have contracts in place with suppliers. Furthermore, due in part to the major capital investment required to build a steel plant, barriers to entry are high and capacity cannot be easily increased. Transformer manufacturers feel that all these factors contribute to the limited availability of higher efficiency steel.

c. Compliance

Some manufacturers emphasized the importance of compliance and enforcement. According to manufacturers, insufficient enforcement could result in an unfair competitive advantage for some companies who opt not to comply. Manufacturers were particularly concerned about importers of foreign manufactured products. One specific issue is the scope of coverage for low-voltage dry-type transformers, which is currently the scope recommended by NEMA in the 2006 TP1 rulemaking. The market for products inside of scope and the market for products outside of scope are approximately equal in terms of revenue. As a result, if standards increase for products that are in-scope, manufacturers are concerned there would be an increase in demand for products that are out-of-scope and are not be subject to the same compliance burdens. Some of these out-of-scope products are highly inefficient, so if they become more widely used, the energy savings resulting from more efficient in-scope transformers may be significantly offset by the additional energy needed to run less efficient out-of-scope transformers.

d. Effective Date

Manufacturers expressed concerns about the amount of time being provided for the implementation of a possible new standard. Manufacturers indicated that more time is needed to meet a new standard, especially if the standard requires a very high efficiency level. In order to avoid stranding too many assets and materials, sufficient time must be given to manufacturers for the purchase and use of new equipment, development of new designs if needed, and transitioning of customers to new product offerings. Also, some manufacturers stated that standards for low-voltage dry-type transformers, which were not included in the previous 2007 rulemaking, should be on an extended timeline.

e. Emergency Situations

Liquid-immersed transformer manufacturers stated that the ability to obtain waivers during emergency situations is an important issue for them. For example, when a natural disaster occurs, there may be a sharp increase in demand for transformers and manufacturers may not be able to meet DOE's efficiency requirements under these circumstances due to limitations of high efficiency steel availability. In order to adequately supply areas facing such emergency situations, manufacturers requested the ability to obtain waivers so that they can produce transformers as quickly as possible.

Because the TSLs proposed in today's rulemaking can be met using traditional steels, DOE does not anticipate that steel availability during emergency situations will affect manufacturer compliance with the proposed TSLs.

J. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts include direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more efficient appliances. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on the purchase of new products; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[34] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment may increase because of shifts in economic activity resulting from amended standards for transformers.

For the standard levels considered in today's direct final rule, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET). ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table, specially aggregated to the 187 sectors most relevant to industrial, commercial, and residential building energy use. DOE notes that ImSET is not a general equilibrium

[34] See Bureau of Economic Analysis, Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II). Washington, DC. U.S. Department of Commerce, 1992.

forecasting model. Given the relatively small change to expenditures due to energy conservation standards and the resulting small changes to employment, however, DOE believes that the size of any forecast error caused by using ImSET will be small.

For more details on the employment impact analysis, see chapter 13 of the NOPR TSD.

K. Utility Impact Analysis

The utility impact analysis estimates several important effects on the utility industry that would result from the adoption of new or amended standards. For this analysis, DOE used the NEMS–BT model to generate forecasts of electricity consumption, electricity generation by plant type, and electric generating capacity by plant type, that would result from each TSL. DOE obtained the energy savings inputs associated with efficiency improvements to considered products from the NIA. DOE conducts the utility impact analysis as a scenario that departs from the latest *AEO 2011* reference case. In other words, the estimated impacts of a proposed standard are the differences between values forecasted by NEMS–BT and the values in the *AEO 2011* reference case.

As part of the utility impact analysis, DOE used NEMS–BT to assess the impacts on electricity prices of the reduced need for new electric power plants and infrastructure projected to result from the considered standards. In NEMS–BT, changes in power generation infrastructure affect utility revenue requirements, which in turn affect electricity prices. DOE estimated the change in electricity prices projected to result over time from each TSL.

Chapter 14 of the NOPR TSD describes the utility impact analysis.

L. Emissions Analysis

In the emissions analysis, DOE estimated the reduction in power sector emissions of CO_2, NO_X, and Hg from amended energy conservation standards for distribution transformers. DOE used the NEMS–BT computer model, which is run similarly to the AEO NEMS, except that distribution transformer energy use is reduced by the amount of energy saved (by fuel type) due to each TSL. The inputs of national energy savings come from the NIA spreadsheet model, while the output is the forecasted physical emissions. The net benefit of each TSL is the difference between the forecasted emissions estimated by NEMS–BT at each TSL and the *AEO* Reference Case. NEMS–BT tracks CO_2 emissions using a detailed module that provides results with broad coverage of all sectors and inclusion of interactive effects. For today's rule, DOE used the version of NEMS–BT based on *AEO2011,* which incorporated projected effects of all emissions regulations promulgated as of January 31, 2011.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap and trading programs, and DOE has determined that these programs create uncertainty about the impact of energy conservation standards on SO_2 emissions. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). SO_2 emissions from 28 eastern States and DC are also limited under the Clean Air Interstate Rule (CAIR, 70 Fed. Reg. 25162 (May 12, 2005)), which created an allowance-based trading program that would gradually replaced the Title IV program in those States and DC. Although CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit), see *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008), it remained in effect temporarily, consistent with the DC Circuit's earlier opinion in *North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). On July 6, 2011 EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule. 76 FR 48208 (August 8, 2011). (See *http://www.epa.gov/crossstaterule/*). On December 30, 2011, however, the DC Circuit stayed the new rules while a panel of judges reviews them, and told EPA to continue enforcing CAIR (see *EME Homer City Generation* v. *EPA,* No. 11–1302, Order at *2 (DC Cir. Dec. 30, 2011)). The *AEO 2011* NEMS–BT used for today's NOPR assumes the implementation of CAIR.

The attainment of emissions caps typically is flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the imposition of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. However, if the standard resulted in a permanent increase in the quantity of unused emissions allowances, there would be an overall reduction in SO_2 emissions from the standards. While there remains some uncertainty about the ultimate effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, the NEMS–BT modeling system that DOE uses to forecast emissions reductions currently indicates that no physical reductions in power sector emissions would occur for SO_2.

As discussed above, the *AEO 2011* NEMS used for today's NOPR assumes the implementation of CAIR, which established a cap on NO_X emissions in 28 eastern States and the District of Columbia. With CAIR in effect, the energy conservation standards for distribution transformers are expected to have little or no physical effect on NO_X emissions in those States covered by CAIR, for the same reasons that they may have little effect on SO_2 emissions. However, the standards would be expected to reduce NO_X emissions in the 22 States not affected by CAIR. For these 22 States, DOE used NEMS–BT to estimate NO_X emissions reductions from the standards considered in today's NOPR.

On December 21, 2011, EPA announced national emissions standards for hazardous air pollutants (NESHAPs) for mercury and certain other pollutants emitted from coal and oil-fired EGUs. (See *http://epa.gov/mats/pdfs/20111216MATSfinal.pdf.*) The NESHAPs do not include a trading program and, as such, DOE's energy conservation standards would likely reduce Hg emissions. For the emissions analysis for this rulemaking, DOE estimated mercury emissions reductions using NEMS–BT based on *AEO2011,* which does not incorporate the NESHAPs. DOE expects that future versions of the NEMS–BT model will reflect the implementation of the NESHAPs.

FPT requested that the DOE perform an emissions analysis for the additional energy required to process higher-grade materials for more efficient core steels. (FPT, No. 27 at p. 4) HI maintained that higher-efficiency transformers will weigh more, which will result in higher air emissions from extra oven energy for annealing and extra energy use for processing raw materials. (HI, No. 23 at p. 12) As discussed in section IV.G.5, DOE did not include the energy used to manufacture transformers in its analysis because EPCA directs DOE to consider the total projected amount of energy savings likely to result directly from the imposition of the standard and DOE interprets this to only include energy used in the generation, transmission, and distribution of fuels used by appliances or equipment. DOE did not include the emissions associated with such energy use for the same reason.

M. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits likely to

result from the reduced emissions of CO_2 and NO_X that are expected to result from each of the considered TSLs. In order to make this calculation similar to the calculation of the NPV of customer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this rulemaking.

For today's NOPR, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by an interagency process. A summary of the basis for those values is provided below, and a more detailed description of the methodologies used is provided as an appendix to chapter 16 of the NOPR TSD.

1. Social Cost of Carbon

Under section 1(b)(6) of Executive Order 12866, 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, ''assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions that have small, or ''marginal,'' impacts on cumulative global emissions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed the SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of carbon dioxide.

When attempting to assess the incremental economic impacts of carbon dioxide emissions, the analyst faces a number of serious challenges. A recent report from the National Research Council[35] points out that any assessment will suffer from uncertainty, speculation, and lack of information about (1) future emissions of greenhouse gases, (2) the effects of past and future emissions on the climate system, (3) the impact of changes in climate on the physical and biological environment, and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise serious questions of science, economics, and ethics and should be viewed as provisional.

Despite the serious limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. Consistent with the directive quoted above, the purpose of the SCC estimates presented here is to make it possible for agencies to incorporate the social benefits from reducing carbon dioxide emissions into cost-benefit analyses of regulatory actions that have small, or ''marginal,'' impacts on cumulative global emissions. Most Federal regulatory actions can be expected to have marginal impacts on global emissions.

For such policies, the agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC value appropriate for that year. The net present value of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years. This approach assumes that the marginal damages from increased emissions are constant for small departures from the baseline emissions path, an approximation that is reasonable for policies that have effects on emissions that are small relative to cumulative global carbon dioxide emissions. For policies that have a large (non-marginal) impact on global cumulative emissions, there is a separate question of whether the SCC is an appropriate tool for calculating the benefits of reduced emissions. This concern is not applicable to this notice, and DOE does not attempt to answer that question here.

At the time of the preparation of this notice, the most recent interagency estimates of the potential global benefits resulting from reduced CO_2 emissions in 2010, expressed in 2010$, were $4.9, $22.3, $36.5, and $67.6 per metric ton avoided. For emissions reductions that occur in later years, these values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[36] although preference is given to consideration of the global benefits of reducing CO_2 emissions.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. Specifically, the interagency group has set a preliminary goal of revisiting the SCC values within 2 years or at such time as substantially updated models become available, and to continue to support research in this area. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Social Cost of Carbon Values Used in Past Regulatory Analyses

To date, economic analyses for Federal regulations have used a wide range of values to estimate the benefits associated with reducing carbon dioxide emissions. In the model year 2011 CAFE final rule, the Department of Transportation (DOT) used both a ''domestic'' SCC value of $2 per metric ton of CO_2 and a ''global'' SCC value of $33 per metric ton of CO_2 for 2007 emission reductions (in 2007$), increasing both values at 2.4 percent per year. It also included a sensitivity analysis at $80 per metric ton of CO_2. See *Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011,* 74 FR 14196 (March 30, 2009) (Final Rule); Final Environmental Impact Statement Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years

[35] National Research Council. ''Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use.'' National Academies Press: Washington, DC 2009.

[36] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no a priori reason why domestic benefits should be a constant fraction of net global damages over time.

2011–2015 at 3–90 (Oct. 2008) (Available at: *http://www.nhtsa.gov/fuel-economy*). A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in carbon dioxide emissions, while a global SCC value is meant to reflect the value of damages worldwide.

A 2008 regulation proposed by DOT assumed a domestic SCC value of $7 per metric ton of CO_2 (in 2006$, with a range of $0 to $14 for sensitivity analysis) for 2011 emission reductions, also increasing at 2.4 percent per year. See *Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015,* 73 FR 24352 (May 2, 2008) (Proposed Rule); Draft Environmental Impact Statement Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015 at 3–58 (June 2008) (Available at: *http://www.nhtsa.gov/fuel-economy*). A regulation for packaged terminal air conditioners and packaged terminal heat pumps finalized by DOE in October of 2008 used a domestic SCC range of $0 to $20 per metric ton CO_2 for 2007 emission reductions (in 2007$). 73 FR 58772, 58814 (Oct. 7, 2008). In addition, EPA's 2008 Advance Notice of Proposed Rulemaking on Regulating Greenhouse Gas Emissions Under the Clean Air Act identified what it described as ''very preliminary'' SCC estimates subject to revision. 73 FR 44354 (July 30, 2008). EPA's global mean values were $68 and $40 per metric ton CO_2 for discount rates of approximately 2 percent and 3 percent, respectively (in 2006$ for 2007 emissions).

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per ton of CO_2. These interim values represent the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules and were offered for public comment in connection with proposed rules, including the joint EPA–DOT fuel economy and CO_2 tailpipe emission proposed rules.

c. Current Approach and Key Assumptions

Since the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates, which were considered for this proposed rule. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models (IAMs) commonly used to estimate the SCC: The FUND, DICE, and PAGE models.[37] These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change. Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

The interagency group selected four SCC values for use in regulatory analyses. Three values are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth value, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. For emissions (or emission reductions) that occur in later years, these values grow in real terms over time, as depicted in Table IV.7.

TABLE IV.7—SOCIAL COST OF CO_2, 2010–2050

[In 2007 dollars per metric ton]

Year	Discount rate (%)			
	5	3	2.5	3
				Average
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

[37] The models are described in appendix 15–A of the NOPR TSD.

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental metric ton of carbon and the limits of existing efforts to model these effects. There are a number of concerns and problems that should be addressed by the research community, including research programs housed in many of the agencies participating in the interagency process to estimate the SCC.

DOE recognizes the uncertainties embedded in the estimates of the SCC used for cost-benefit analyses. As such, DOE and others in the U.S. Government intend to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling. In this context, statements recognizing the limitations of the analysis and calling for further research take on exceptional significance.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the most recent values identified by the interagency process, adjusted to 2010$ using the GDP price deflator. For each of the four cases specified, the values used for emissions in 2010 were $4.9, $22.3, $36.5, and $67.6 per metric ton avoided (values expressed in 2010$).[38] To monetize the CO_2 emissions reductions expected to result from amended standards for distribution transformers, DOE used the values identified in Table A1 of the ''Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,'' which is reprinted in appendix 16–A of the NOPR TSD, appropriately escalated to 2010$. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Valuation of Other Emissions Reductions

DOE investigated the potential monetary benefit of reduced NO_X emissions from the TSLs it considered. As noted above, new or amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by the CAIR. DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's NOPR based on environmental damage estimates found in the relevant scientific literature. Available estimates suggest a very wide range of monetary values, ranging from $370 per ton to $3,800 per ton of NO_X from stationary sources, measured in 2001$ (equivalent to a range of $450 to $4,623 per ton in 2010$).[39] In accordance with OMB guidance, DOE conducted two calculations of the monetary benefits derived using each of the economic values used for NO_X, one using a real discount rate of 3 percent and the other using a real discount rate of 7 percent.[40]

DOE is aware of multiple agency efforts to determine the appropriate range of values used in evaluating the potential economic benefits of reduced Hg emissions. DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it once again monetizes Hg in its rulemakings.

N. Discussion of Other Comments

Comments DOE received in response to the preliminary analysis on the soundness and validity of the methodologies and data DOE used are discussed in section IV. Other stakeholder comments in response to the preliminary analysis addressed the burdens and benefits associated with new energy conservation standards. DOE addresses these other stakeholder comments below.

1. Trial Standard Levels

Current standards maintain ''harmonized'' standards across phases, which means that a single-phase transformer must meet the same efficiency standard of its three-phase analog of three times the kVA. DOE is aware of the potential for misapplied standards to shift market demand to segments with relatively less stringent coverage and implanted phase harmonization to guard against incentivizing replacement of three-phase transformers with three smaller single-phase units.

HVOLT asserted that the previous 2007 rulemaking misstated the potential of three-phase distribution transformers early on in the rulemaking. Furthermore, HVOLT commented that, as a result, the final selected TSL for three-phase distribution transformers was low compared to the TSL selected for single-phase transformers. HVOLT believes that this has caused a misperception to the public that three-phase transformers received a less-stringent standard, when it is in fact of equal stringency to the standard for single-phase transformers. HVOLT requested that this point be clarified in the NOPR. (HVOLT, No. 33 at p. 2)

Relative to single-phase designs, DOE understands three-phase transformers to have an efficiency disadvantage related to harmonics and zero-sequence fluxes. That disadvantage happens to be of such a size that efficiency will be similar, all else constant, for transformers with the same power per phase. For example, a 75 kVA three-phase unit should have efficiency similar to that of a 25 kVA single-phase unit designed to similar specifications. During the 2007 rulemaking, DOE created additional TSLs to ''harmonize'' efficiency across phase counts in responses to stakeholder comment that standards should be set thus.

For the NOPR, DOE relaxed the phase harmonization constraint on single-phase efficiency, particularly for LVDT and MVDT equipment classes. DOE believes that market shift will not occur unless standards are dramatically disproportionate.

DOE acknowledges that acceptance of this ''constant efficiency per phase'' principle is not universal and seeks comment on where and why this principle may or may not apply.

Hammond Power Solutions and Howard Industries expressed agreement with DOE's method to develop TSLs. (HPS, No. 3 at p. 5; HI, No. 23 at p. 7) However, ASAP commented that it would like to see the TSL at the minimum LCC point as well as the maximum level that is cost-effective, which typically would fall above the LCC. (ASAP, Pub. Mtg. Tr., No. 34 at p. 127) Furthermore, ASAP encouraged DOE to consider a TSL that retained a variety of core materials as an option, and to include a wide range of TSLs for consideration. (ASAP, Pub. Mtg. Tr., No. 34 at p. 128) ABB commented that DOE should develop a structured methodology that evaluates and ranks

[38] Table A1 presents SCC values through 2050. For DOE's calculation, it derived values after 2050 using the 3-percent per year escalation rate used by the interagency group.

[39] For additional information, refer to U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, 2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities, Washington, DC

[40] OMB, Circular A–4: Regulatory Analysis (Sept. 17, 2003).

each CSL and TSL based on technological feasibility, economic justification, and maximum improvement in energy efficiency. (ABB, No. 14 at pp. 16, 19–20) ABB added that DOE should recognize the risk of inadvertently shifting demand between kVA within the same equipment class, between single-phase and three-phase units within the same product group (*e.g.* MVDT or LVDT), between product groups (*e.g.,* between liquid-immersed and MVDT), and between new product offerings and refurbished transformers. (ABB, No. 14 at pp. 16, 19–20) Edison Electrical Institute requested that DOE provide detailed tables explaining how the CSL numbers in the preliminary analysis relate to the TSL numbers in the NOPR. (EEI, No. 29 at p. 6)

DOE constructs TSLs from efficiency levels (ELs), the NOPR analog of the Preliminary Analysis' CSLs, using several economic factors (*e.g.,* maximum LCC) and technological factors (*e.g.,* maximum LCC where a variety of core materials are available) factors. DOE did not choose a TSL corresponding to minimized LCC savings above the maximum, but does have a TSL corresponding to the CSL above maximum LCC savings that offers increased efficiency. DOE does not use CSLs from the Preliminary Analysis to construct TSLs, but does outline in section V.A the ELs packaged into each TSL. Finally, DOE is concerned about the possibility of inadvertently shifting demand between equipment.

2. Proposed Standards

NRECA and T&DEC cautioned that raising efficiency standards for medium-voltage dry-type transformers would limit a customer's purchase choices and increase costs both for utilities and their customers. They stated that higher efficiency standards would not be economically justified for rural electric cooperatives. (NRECA/T&DEC, No. 31 and No. 36 at pp. 1–2) FPT stated its opposition to new efficiency standards that would limit the choices available to customers to achieve the optimum transformer design for each circumstance. (FPT, No. 27 at p. 1) PHI recommended that DOE not raise efficiency standards for liquid-immersed distribution transformers because they cannot withstand additional increases in weight or dimensions. (PHI, Nos. 26 and 37 at p. 1) FPT commented that, if the efficiency levels for medium-voltage dry-type transformers are increased, the PBP for the cost increase to meet the higher mandated efficiency should be no longer than 3 to 5 years. (FPT, No. 27 at p. 18)

DOE appreciates comment on appropriate standard levels and acknowledges that maintaining availability of equipment offering unique consumer utility is important. DOE believes, however, that it has made an effort to quantify the costs of more efficient equipment to a variety of consumers as well as the costs of additional size and weight.

The Kentucky Association of Electric Cooperatives, Inc. (KAEC) commented that the current minimum efficiency standards for liquid-immersed distribution transformers already represent the maximum energy efficiency that is economically justified, and any higher efficiency level will come at a high cost. (KAEC, No. 4 at pp. 1–2) Power Partners commented that increases to the current minimum efficiency standards are not justified based on the increased costs to manufacturers, customers, and ultimately, consumers. (PP, No. 19 at p. 1) FPT noted that it is not in favor of increasing efficiency standards for dry-type distribution transformers because higher efficiency levels will take away customer choices for the most optimum transformer design. (FPT, No. 27 at pp. 1, 18) Additionally, FPT commented that, because most MVDTs are custom built, they should not be subject to standards. (FPT, No. 27 at pp. 1, 18) Furthermore, HVOLT noted that any standard level should not require a specific design, including materials, configurations and manufacturing methods. HVOLT believes that the 2007 rule reached the limits for many of these considerations, and once the inputs are corrected, the analysis will indicate this result. (HVOLT, No. 33 at p. 3)

Berman Economics suggested that DOE set the efficiency standard at the highest level justified, which appeared to be CSL 4 in the preliminary analysis or CSL 2 at a minimum after adjusting for overpricing. BE suggested that change itself affects manufacturers more than the amount of change because any change in efficiency standards requires manufacturers to re-optimize designs to ensure compliance. (BE, No. 16 at p. 2) Joint comments submitted by ASAP, ACEEE and NRDC noted that DOE's analysis shows that amorphous steel is cost-effective and commented that DOE should propose standards that utilize amorphous steel technology for a portion of the market. They believed that DOE should identify the portion of the market that would be the least disrupted by standards set at an amorphous level, such as small, pad-mounted liquid-immersed transformers (DL1 and DL4). It is their understanding that most of the manufacturers operating in the DL1 and DL4 markets already have amorphous capabilities, and very few smaller manufacturers operate in this market segment. (ASAP/ACEEE/NRDC, No. 28 at pp. 4–5) Alternatively, Power Partners commented that DOE should not set a standard level that requires a core steel above the M3 grade. (PP, No. 19 at p. 4)

DOE conducted several analyses in order to meet its obligation to evaluate the economic justifiability of a proposed standard, notable among them the LCC and PBP Analysis and the NIA. Summaries of those analyses are present in this notice, with more detailed descriptions of the methodology in the TSD. In proposing or setting standards, DOE considers a variety of criteria, including the availability of materials needed to reach a given efficiency. In the case of core steel, DOE has conducted a supply analysis (presented in appendix 3A of the NOPR TSD) examining the ability of the market to supply steel at different efficiency levels and requests comment on the methodology and results of this analysis. The barriers to entry and the potential for limited supply of amorphous steel, and the potential for significant price in the near future, are important qualitative factors that DOE is considering.

The Copper Development Association (CDA) and Pacific Gas & Electric (PG&E) commented that DOE should set standards levels at the highest efficiency that is technologically feasible and economically justified. (CDA, No. 17 at p. 1; PG&E, Pub. Mtg. Tr., No. 34 at pp. 24–25) The American Public Power Association (APPA) noted that the October 2007 final rule for distribution transformers achieved the highest efficiency levels that are economically justified and expressed concern that when efficiency levels gravitate to the highest levels achievable, the cost benefit analysis breaks down as peripheral costs rise. Pole replacements and pad mount replacements–due to larger distribution transformers–also add costs that might not be adequately captured in the DOE analysis. (APPA, No. 21 at p. 2)

HVOLT opined that this rulemaking is a reassessment of the previous distribution transformers rulemaking but with new economic parameters. It asserted that national standards should be doable with known technology, not require an invention, and not put a lot of manufacturers out of business. (HVOLT, Pub. Mtg. Tr., No. 34 at p. 116) NRECA and the Transmission & Distribution Engineering Committee

(T&DEC) together recommended that DOE not raise the efficiency standards for liquid-filled distribution transformers, because the current levels already represent the economically justified maximum efficiency. Both added that many users in rural areas with low transformer loads cannot economically justify the current level. (NRECA/T&DEC, Nos. 31 and 36 at p. 1) Additionally, the added weight and increased dimensions of the higher efficiency distribution transformers would require pole replacement for many cooperatives and other utilities. NRECA/T&DEC opined that when higher efficiency levels are mandated, the result could be less production, less-competitive materials, questionable availability, and reduced competition. (NRECA/T&DEC, Nos. 31 and 36 at p. 3)

FPT noted that if DOE sets higher efficiency standards, it should coordinate with the EPA to reinstitute the Energy Star program for distribution transformers so that manufacturers can use the label to market their products. (FPT, No. 27 at p. 4) FPT also commented that higher efficiency levels based on a specified loading of 35 percent or 50 percent could result in greater losses for applications that operate at higher load factors. FPT provided an example of a NEMA Premium transformer versus a TP1 transformer with an 80-degree temperature rise, indicating that the TP1 transformer with the lower temperature rise could have a greater efficiency at loadings above 50 percent. (FPT, No. 27 at pp. 5–7)

The Kentucky Association of Electric Cooperatives (KAEC) believed that liquid-immersed single-phase standards are adequate and achieve maximum efficiency while being economically justifiable. It believed the biggest efficiency gains have already been made. In addition, KAEC expressed concern that, as a small manufacturer, it would need higher capital investment to meet any increase in efficiency standards, and that its energy savings would be less and payback periods longer because it and other rural electric cooperatives serve fewer customers. (KAEC, Pub. Mtg. Tr., No. 34 at pp. 22–23)

As stated previously, DOE seeks to set the highest energy conservation standards that are technologically feasible, economically justified, and that will result in significant energy savings and appreciates any analysis that would assist DOE in evaluating the appropriate standard using these parameters.

3. Alternative Methods

Mr. Kenneth Harden (HK), a design engineer, offered to DOE a copy of his thesis, which evaluated the impact of federal regulations and operational conditions on the efficiency of low-voltage dry-type distribution transformers, and provided recommendations to optimize future rulemakings certifying the energy efficiency of low-voltage dry-type distribution transformers. It also recommended the specification of low-voltage dry-type distribution transformers and the design of transformers for industrial power networks. (HK, No. 12 at p. 1)

DOE appreciates Mr. Harden's submission and would welcome a meeting to discuss some of the thoughts he has put forth on the rulemaking process in general and on distribution transformers in particular.

4. Labeling

Both NEMA and FPT recommended that DOE establish a uniform approach for how to mark a distribution transformer nameplate to indicate compliance with the applicable energy conservation standard in 10 CFR 431.196. (FPT, No. 27 at p. 20; NEMA, No. 13 at p. 9) NEMA proposed the following: ''DOE 10 CFR PART 431 COMPLIANT.'' (NEMA, No. 13 at p. 9)

DOE appreciates the comments regarding labeling and will take it under consideration as it continues to explore appropriate requirements for certification, compliance, enforcement and how labeling may fit into those processes. Certification requirements for distribution transformers can be found in 10 CFR 429.47.

5. Imported Units

NEMA commented that, although covered non-compliant products that are imported for export must be marked as such, U.S. Customs and Border Protection will likely have difficulty determining which products are covered, and whether a covered product is compliant, other than those marked for export. (NEMA, No. 13 at p. 9)

DOE notes that it is the responsibility of the importer, and not United States Customs, to establish compliance just as any manufacturer would. DOE welcomes further comment and evidence that can suggest imported transformers are failing to meet standards.

V. Analytical Results and Conclusions

A. Trial Standard Levels

DOE analyzed the benefits and burdens of the TSLs developed for today's proposed rule. DOE examined seven TSLs for liquid-immersed distribution transformers, six TSLs for low-voltage, dry-type distribution transformers, and five TSLs for medium-voltage dry-type distribution transformers. Table V.1 through Table V.3 present the TSLs analyzed and the corresponding efficiency level for the representative unit in each transformer design line. For other capacities in each design line, the corresponding efficiencies for each TSL are given in appendix 8–B in the NOPR TSD. The baseline in the tables is equal to the current energy conservation standard.

For liquid-immersed distribution transformers, the efficiency levels in each TSL can be characterized as follows: TSL 1 represents an increase in efficiency where a diversity of electrical steels are cost-competitive and economically feasible for all design lines; TSL 2 represents EL1 for all design lines; TSL 3 represents the maximum efficiency level achievable with M3 core steel; TSL 4 represents the maximum NPV with 7 percent discounting; TSL 5 represents EL 3 for all design lines; TSL 6 represents the maximum source energy savings with positive NPV with 7 percent discounting; and TSL 7 represents the maximum technologically feasible level (max tech).

For low-voltage, dry-type distribution transformers, the efficiency levels in each TSL can be characterized as follows: TSL 1 represents the maximum efficiency level achievable with M6 core steel; TSL 2 represents NEMA premium levels; TSL 3 represents the maximum EL achievable using butt-lap miter core manufacturing for single-phase distribution transformers, and full miter core manufacturing for three-phase distribution transformers; TSL 4 represents the maximum NPV with 7 percent discounting; TSL 5 represents the maximum source energy savings with positive NPV with 7 percent discounting; and TSL 6 represents the maximum technologically feasible level (max tech).

For medium-voltage, dry-type distribution transformers, the efficiency levels in each TSL can be characterized as follows: TSL 1 represents EL1 for all design lines; TSL 2 represents an increase in efficiency where a diversity of electrical steels are cost-competitive and economically feasible for all design lines; TSL 3 represents the maximum NPV with 7 percent discounting; TSL 4 represents the maximum source energy savings with positive NPV with 7 percent discounting; and TSL 5 represents the maximum

technologically feasible level (max tech).

TABLE V.1—EFFICIENCY VALUES OF THE TRIAL STANDARD LEVELS FOR LIQUID-IMMERSED TRANSFORMERS BY DESIGN LINE

[In percent]

Design line	Baseline	TSL						
		1	2	3	4	5	6	7
1	99.08	99.16	99.16	99.16	99.22	99.25	99.31	99.50
2	98.91	98.91	99.00	99.00	99.07	99.11	99.18	99.41
3	99.42	99.48	99.48	99.51	99.57	99.54	99.61	99.73
4	99.08	99.16	99.16	99.16	99.22	99.25	99.31	99.60
5	99.42	99.48	99.48	99.51	99.57	99.54	99.61	99.69

TABLE V.2—EFFICIENCY VALUES OF THE TRIAL STANDARD LEVELS FOR LOW-VOLTAGE DRY-TYPE TRANSFORMERS BY DESIGN LINE

[In percent]

Design line	Baseline	TSL					
		1	2	3	4	5	6
6	98.00	98.00	98.60	98.80	99.17	99.17	99.44
7	98.00	98.47	98.60	98.80	99.17	99.17	99.44
8	98.60	99.02	99.02	99.25	99.44	99.58	99.58

TABLE V.3—EFFICIENCY VALUES OF THE TRIAL STANDARD LEVELS FOR MEDIUM-VOLTAGE DRY-TYPE TRANSFORMERS BY DESIGN LINE

[In percent]

Design line	Baseline	TSL				
		1	2	3	4	5
9	98.82	98.93	98.93	99.04	99.04	99.55
10	99.22	99.29	99.37	99.37	99.37	99.63
11	98.67	98.81	98.81	99.13	99.13	99.50
12	99.12	99.21	99.30	99.46	99.46	99.63
13A	98.63	98.69	98.69	99.04	99.04	99.45
13B	99.15	99.19	99.28	99.45	99.45	99.52

B. Economic Justification and Energy Savings

1. Economic Impacts on Customers

a. Life-Cycle Cost and Payback Period

To evaluate the net economic impact of standards on transformer customers, DOE conducted LCC and PBP analyses for each TSL. In general, a higher-efficiency product would affect customers in two ways: (1) Annual operating expense would decrease; and (2) purchase price would increase. Section III.F.2 of this notice discusses the inputs DOE used for calculating the LCC and PBP. The LCC and PBP results are calculated from transformer cost and efficiency data that are modeled in the engineering analysis (section IV.C). During the negotiated rulemaking, DOE presented separate transformer cost data based on 2010 and 2011 material prices to the committee members. DOE conducted its LCC and PBP analysis utilizing both the 2010 and 2011 material price cost data. The average results of these two analyses are presented here.

For each design line, the key outputs of the LCC analysis are a mean LCC savings and a median PBP relative to the base case, as well as the fraction of customers for which the LCC will decrease (net benefit), increase (net cost), or exhibit no change (no impact) relative to the base-case product forecast. No impacts occur when the product efficiencies of the base-case forecast already equal or exceed the efficiency at a given TSL. Table V.4 through Table V.17 show the key results for each transformer design line.

TABLE V.4—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 1 REPRESENTATIVE UNIT

	Trial standard level						
	1	2	3	4	5	6	7
Efficiency (%)	99.16	99.16	99.16	99.22	99.25	99.31	99.50
Transformers with Net LCC Cost (%)	57.9	57.9	57.9	4.8	4.8	8.0	55.4

TABLE V.4—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 1 REPRESENTATIVE UNIT—Continued

	Trial standard level						
	1	2	3	4	5	6	7
Transformers with Net LCC Benefit (%)	41.8	41.8	41.8	95.0	95.0	92.0	44.6
Transformers with No Change in LCC (%)	0.2	0.2	0.2	0.2	0.2	0.0	0.0
Mean LCC Savings ($)	36	36	36	641	641	532	50
Median PBP (Years)	20.2	20.2	20.2	7.9	7.9	10.0	19.2

TABLE V.5—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 2 REPRESENTATIVE UNIT

	Trial standard level						
	1	2	3	4	5	6	7
Efficiency (%)	98.91	99.00	99.00	99.07	99.11	99.18	99.41
Transformers with Net LCC Cost (%)	0.0	14.2	14.2	9.8	11.2	15.8	80.2
Transformers with Net LCC Benefit (%)	0.0	85.8	85.8	90.2	88.8	84.3	19.8
Transformers with No Change in LCC (%)	100.0	0.0	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	0	309	309	338	300	250	−736
Median PBP (Years)	0.0	6.9	6.9	8.0	9.5	11.5	24.3

TABLE V.6—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 3 REPRESENTATIVE UNIT

	Trial standard level						
	1	2	3	4	5	6	7
Efficiency (%)	99.48	99.48	99.51	99.57	99.54	99.61	99.73
Transformers with Net LCC Cost (%)	15.7	15.7	11.2	4.0	5.3	3.9	25.1
Transformers with Net LCC Benefit (%)	83.0	83.0	87.7	96.0	94.6	96.1	74.9
Transformers with No Change in LCC (%)	1.4	1.4	1.2	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	2,413	2,413	3,831	5,591	5,245	6,531	4,135
Median PBP (Years)	6.3	6.3	4.0	4.7	4.6	5.2	13.3

TABLE V.7—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 4 REPRESENTATIVE UNIT

	Trial standard level						
	1	2	3	4	5	6	7
Efficiency (%)	99.16	99.16	99.16	99.22	99.25	99.31	99.60
Transformers with Net LCC Cost (%)	6.0	6.0	6.0	1.9	1.9	1.9	31.1
Transformers with Net LCC Benefit (%)	93.5	93.5	93.5	97.5	97.5	97.6	63.9
Transformers with No Change in LCC (%)	0.6	0.6	0.6	0.6	0.6	0.6	0.0
Mean LCC Savings ($)	862	862	862	3,356	3,356	3,362	1,274
Median PBP (Years)	5.0	5.0	5.0	4.1	4.1	4.1	14.6

TABLE V.8—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 5 REPRESENTATIVE UNIT

	Trial standard level						
	1	2	3	4	5	6	7
Efficiency (%)	99.48	99.48	99.51	99.57	99.54	99.61	99.69
Transformers with Net LCC Cost (%)	19.1	19.1	13.2	7.8	10.4	7.9	39.9
Transformers with Net LCC Benefit (%)	80.6	80.6	86.8	92.2	89.6	92.1	60.1

TABLE V.8—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 5 REPRESENTATIVE UNIT—Continued

	Trial standard level						
	1	2	3	4	5	6	7
Transformers with No Change in LCC (%)	0.4	0.4	0.1	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	7,787	7,787	10,288	12,513	11,395	12,746	3,626
Median PBP (Years)	4.0	4.0	4.2	6.3	5.7	8.3	16.9

TABLE V.9—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 6 REPRESENTATIVE UNIT

	Trial standard level					
	1	2	3	4	5	6
Efficiency (%)	98.00	98.60	98.93	99.17	99.17	99.44
Transformers with Net Increase in LCC (%)	0.0	71.5	17.6	36.2	36.2	93.4
Transformers with Net LCC Savings (%)	0.0	28.5	82.4	63.8	63.8	6.6
Transformers with No Impact on LCC (%)	100.0	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	0	−125	335	187	187	−881
Median PBP (Years)	0.0	24.7	13.0	16.3	16.3	32.4

TABLE V.10—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 7 REPRESENTATIVE UNIT

	Trial standard level					
	1	2	3	4	5	6
Efficiency (%)	98.47	98.60	98.80	99.17	99.17	99.44
Transformers with Net Increase in LCC (%)	1.8	1.8	2.0	3.7	3.7	46.4
Transformers with Net LCC Savings (%)	98.2	98.2	98.0	96.3	96.3	53.6
Transformers with No Impact on LCC (%)	0.0	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	1,714	1,714	1,793	2,270	2,270	270
Median PBP (Years)	4.5	4.5	4.7	6.9	6.9	18.1

TABLE V.11—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 8 REPRESENTATIVE UNIT

	Trial standard level					
	1	2	3	4	5	6
Efficiency (%)	99.02	99.02	99.25	99.44	99.58	99.58
Transformers with Net Increase in LCC (%)	5.2	5.2	15.3	10.5	78.5	78.5
Transformers with Net LCC Savings (%)	94.8	94.8	84.7	89.5	21.5	21.5
Transformers with No Impact on LCC (%)	0.0	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	2,476	2,476	2,625	4,145	−2,812	−2,812
Median PBP (Years)	8.4	8.4	12.3	11.0	24.5	24.5

TABLE V.12—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 9 REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	98.93	98.93	99.04	99.04	99.55
Transformers with Net Increase in LCC (%)	3.4	3.4	5.7	5.7	53.4
Transformers with Net LCC Savings (%)	83.4	83.4	94.3	94.3	46.6
Transformers with No Impact on LCC (%)	13.3	13.3	0.0	0.0	0.0
Mean LCC Savings ($)	849	849	1,659	1,659	237
Median PBP (Years)	2.6	2.6	6.2	6.2	19.1

TABLE V.13—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 10 REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	99.29	99.37	99.37	99.37	99.63
Transformers with Net Increase in LCC (%)	0.7	16.7	16.7	16.7	84.8

TABLE V.13—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 10 REPRESENTATIVE UNIT—Continued

	Trial standard level				
	1	2	3	4	5
Transformers with Net LCC Savings (%)	98.8	83.3	83.3	83.3	15.2
Transformers with No Impact on LCC (%)	0.5	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	4,509	4,791	4,791	4,791	−12,756
Median PBP (Years)	1.1	8.8	8.8	8.8	28.4

TABLE V.14—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 11 REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	98.81	98.81	99.13	99.13	99.50
Transformers with Net Increase in LCC (%)	20.6	20.6	25.7	25.7	76.1
Transformers with Net LCC Savings (%)	79.4	79.4	74.3	74.3	23.9
Transformers with No Impact on LCC (%)	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	1,043	1,043	2,000	2,000	−3160
Median PBP (Years)	10.7	10.7	14.1	14.1	24.5

TABLE V.15—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 12 REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	99.21	99.30	99.46	99.46	99.63
Transformers with Net Increase in LCC (%)	6.7	7.8	18.1	18.1	81.1
Transformers with Net LCC Savings (%)	93.3	92.2	81.9	81.9	18.9
Transformers with No Impact on LCC (%)	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	4,518	6,934	8,860	8,860	−12,420
Median PBP (Years)	6.3	9.0	13.0	13.0	25.9

TABLE V.16—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 13A REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	98.69	98.69	99.04	99.04	99.45
Transformers with Net Increase in LCC (%)	52.2	52.2	64.4	64.4	97.1
Transformers with Net LCC Savings (%)	47.8	47.8	35.6	35.6	2.9
Transformers with No Impact on LCC (%)	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	25	25	−846	−846	−11,077
Median PBP (Years)	16.5	16.5	21.7	21.7	37.1

TABLE V.17—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 13B REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	99.19	99.28	99.45	99.45	99.52
Transformers with Net Increase in LCC (%)	28.5	26.3	52.7	52.7	67.2
Transformers with Net LCC Savings (%)	71.3	73.7	47.3	47.3	32.8
Transformers with No Impact on LCC (%)	0.2	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	2,733	4,709	384	384	−5,407
Median PBP (Years)	4.6	12.5	19.3	19.3	21.9

b. Customer Subgroup Analysis

DOE estimated customer subgroup impacts by determining the LCC impacts of the distribution transformer TSLs on purchasers of vault-installed transformers (primarily urban utilities). DOE included only the liquid-immersed design lines in this analysis, since those types account for more than ninety percent of the transformers purchased by electric utilities. Table V.18 shows the mean LCC savings at each TSL for this customer subgroup.

Chapter 11 of the NOPR TSD explains DOE's method for conducting the customer subgroup analysis and

presents the detailed results of that analysis.

TABLE V.18—COMPARISON OF MEAN LIFE-CYCLE COST SAVINGS FOR LIQUID-IMMERSED TRANSFORMERS PURCHASED BY CONSUMER SUBGROUPS

[2010$]

Design line	Trial standard level						
	1	2	3	4	5	6	7
Medium Vault Replacement Subgroup							
4	−422	−422	−422	106	106	113	−2,358
5	1,062	1,062	3,203	4,689	3,854	4,270	−5,996
All Customers							
4	862	862	862	3,356	3,356	3,362	1,274
5	7,787	7,787	10,288	12,513	11,395	12,746	3626

c. Rebuttable-Presumption Payback

As discussed above, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6295(o)(2)(B)(iii), 6316(a)) DOE calculated a rebuttable-presumption PBP for each TSL to determine whether DOE could presume that a standard at that level is economically justified. Table V.19 shows the rebuttable-presumption PBPs for the considered TSLs. Because only a single, average value is necessary for establishing the rebuttable-presumption PBP, DOE used discrete values rather than distributions for its input values. As required by EPCA, DOE based the calculations on the assumptions in the DOE test procedure for distribution transformers. (42 U.S.C. 6295(o)(2)(B)(iii), 6316(a)) As a result, DOE calculated a single rebuttable-presumption payback value, and not a distribution of PBPs, for each TSL.

TABLE V.19—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS) FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS

Design line	Rated capacity (kVA)	Trial standard level						
		1	2	3	4	5	6	7
1	50	17.1	17.1	17.1	8.3	8.3	10.2	16.3
2	25	0.0	9.5	9.5	9.9	11.0	12.5	21.3
3	500	5.8	5.8	4.5	4.9	4.9	5.2	11.9
4	150	4.7	4.7	4.7	3.9	3.9	4.0	13.5
5	1500	4.3	4.3	4.2	5.9	5.5	7.5	15.2

TABLE V.20—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS) FOR LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS

Design line	Rated capacity (kVA)	Trial standard level					
		1	2	3	4	5	6
6	25	0.0	15.9	13.0	15.0	15.0	26.5
7	75	4.2	4.2	4.4	6.4	6.4	14.9
8	300	6.8	6.8	10.4	9.7	20.2	20.2

TABLE V.21—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS) FOR MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS

Design line	Rated capacity (kVA)	Trial standard level				
		1	2	3	4	5
9	300	1.9	1.9	4.6	4.6	15.5
10	1,500	1.9	5.7	5.7	5.7	21.8
11	300	9.5	9.5	13.0	13.0	18.8
12	1,500	5.5	7.44	12.0	12.0	20.3
13A	300	11.9	11.9	22.2	22.2	28.9
13B	2,000	5.2	11.1	19.1	19.1	19.4

DOE believes that the rebuttable-presumption PBP criterion (*i.e.,* a limited PBP) is not sufficient for determining economic justification. Therefore, DOE has considered a full range of impacts, including those to customers, manufacturers, the Nation, and the environment. Section V.C provides a complete discussion of how DOE considered the range of impacts to select its proposed standards.

2. Economic Impact on Manufacturers

DOE performed a MIA to estimate the impact of amended energy conservation standards on manufacturers of distribution transformers. The section below describes the expected impacts on manufacturers at each TSL. Chapter 12 of the TSD explains the analysis in further detail.

a. Industry Cash-Flow Analysis Results

The tables below depict the financial impacts (represented by changes in INPV) of amended energy standards on manufacturers as well as the conversion costs that DOE estimates manufacturers would incur at each TSL. The effect of amended standards on INPV was analyzed separately for each type of distribution transformer manufacturer: Liquid-immersed, medium-voltage dry-type, and low-voltage dry-type. To evaluate the range of cash flow impacts on the distribution transformer industry, DOE modeled two different scenarios using different assumptions for markups that correspond to the range of anticipated market responses to new and amended standards. A full description of these scenarios and their results can be found in chapter 12 of the NOPR TSD.

To assess the lower end of the range of potential impacts, DOE modeled the preservation of operating profit markup scenario, which assumes that manufacturers would be able to earn the same operating margin in absolute dollars in the standards case as in the base case. To assess the higher end of the range of potential impacts, DOE modeled a preservation of gross margin percentage markup scenario in which a uniform ''gross margin percentage'' markup is applied across all efficiency levels. In this scenario, DOE assumed that a manufacturer's absolute dollar markup would increase as production costs increase in the standards case.

The set of results below shows two tables of INPV impacts for each of the three types of distribution transformer manufacturers: The first table reflects the lower bound of impacts and the second represents the upper bound.

In the discussion that follows the tables, DOE also discusses the difference in cash flow between the base case and the standards case in the year before the compliance date for new and amended energy conservation standards. This figure represents how large the required conversion costs are relative to the cash flow generated by the industry in the absence of new and amended energy conservation standards.

TABLE V.22—MANUFACTURER IMPACT ANALYSIS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
INPV	2011$ M	625.1	585.5	532.1	523.8	461.0	451.2	427.5	297.9
Change in INPV	2011$ M	.....	(39.6)	(92.9)	(101.2)	(164.0)	(173.8)	(197.6)	(327.2)
	%	.....	(6.3)	(14.9)	(16.2)	(26.2)	(27.8)	(31.6)	(52.3)
Capital Conversion Costs	2011$ M	.....	26.3	64.9	67.6	98.5	100.4	105.6	128.2
Product Conversion Costs	2011$ M	.....	27.6	46.8	57.5	93.7	93.7	93.7	93.7
Total Conversion Costs	2011$ M	.....	53.9	111.7	125.1	192.1	194.1	199.3	221.8

* **Note:** Parentheses indicate negative values.

TABLE V.23—MANUFACTURER IMPACT ANALYSIS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP

	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
INPV	2011$ M	625.1	614.7	583.4	577.5	551.6	537.1	547.6	673.0
Change in INPV	2011$ M	.....	(10.4)	(41.7)	(47.6)	(73.5)	(88.0)	(77.5)	48.0
	%	.....	(1.7)	(6.7)	(7.6)	(11.8)	(14.1)	(12.4)	7.7
Capital Conversion Costs	2011$ M	.....	26.3	64.9	67.6	98.5	100.4	105.6	128.2
Product Conversion Costs	2011$ M	.....	27.6	46.8	57.5	93.7	93.7	93.7	93.7
Total Conversion Costs	2011$ M	.....	53.9	111.7	125.1	192.1	194.1	199.3	221.8

At TSL 1, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$39.6 million to −$10.4 million, corresponding to a change in INPV of −6.3 percent to −1.7 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 60.1 percent to $15.8 million, compared to the base-case value of $39.5 million in the year before the compliance date (2015).

While TSL 1 can be met with traditional steels, including M3, in all design lines, amorphous core transformers will be incrementally more competitive on a first cost basis, likely inducing some or many manufacturers to gradually build amorphous steel transformer production capacity. Because the production process for amorphous cores is entirely separate from that of silicon steel cores, large investments in new capital, including new core cutting equipment and annealing ovens will be required. Additionally, a great deal of testing, prototyping, design and manufacturing engineering resources will be required because most manufacturers have relatively little experience, if any, with amorphous steel transformers. These capital and production conversion expenses lead to a reduction in cash flow in the years preceding the standard. In the lower-bound scenario, DOE assumes manufacturers can only maintain annual operating profit in the

standards case. Therefore, these conversion investments, and manufacturers' higher working capital needs associated with more expensive transformers, drain cash flow and lead to a greater reduction in INPV, when compared to the upper-bound scenario. In the upper bound scenario, DOE assumes manufacturers will be able to fully mark up and pass the higher product costs, leading to higher operating income. This higher operating income is essentially offset on a cash flow basis by the conversion costs and the increase in working capital requirements, leading to a negligible change in INPV at TSL1 in the upper-bound scenario.

At TSL 2, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$92.9 million to −$41.7 million, corresponding to a change in INPV of −14.9 percent to −6.7 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 122.7 percent to −$9 million, compared to the base-case value of $39.5 million in the year before the compliance date (2015).

TSL 2 requires the same efficiency levels as TSL 1, except for DL 2, which is increased from baseline to EL1. EL1, as opposed to the baseline efficiency, could induce manufacturers to build more amorphous capacity, when compared to TSL 1, because amorphous transformers become incremental more cost competitive. Because DL2 represents the largest share of core steel usage of all design lines, this has a significant impact on investments. There are more severe impacts on industry in the lower-bound profitability scenario when these greater one-time cash outlays are coupled with slight margin pressure. In the high-profitability scenario, manufacturers are able to maintain gross margins, mitigating the adverse cash flow impacts of the increased investment in working capital (associated with more expensive transformers).

At TSL 3, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$101.2 million to −$47.6 million, corresponding to a change in INPV of −16.2 percent to −7.6 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 135.2 percent to −$13.9 million, compared to the base-case value of $39.5 million in the year before the compliance date (2015).

TSL 3 results are similar to TSL 2 results because the efficiency levels are the same except for DL3 and DL5, which each increase to EL 2 under TSL 3. The increase in stringency makes more amorphous core transformers slightly more cost competitive in these DLs, likely increasing amorphous transformer capacity needs, all other things being equal, and driving more investment to meet the standards.

At TSL 4, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$164 million to −$73.5 million, corresponding to a change in INPV of −26.2 percent to −11.8 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 202 percent to −$40.3 million, compared to the base-case value of $39.5 million in the year before the compliance date (2015).

During interviews, manufacturers expressed differing views on whether the efficiency levels embodied in TSL 4 would shift the market away from silicon steels entirely. Because DL3 and DL5 must meet EL4 at this TSL, DOE expects the majority of the market would shift to amorphous core transformers at TSL 4 and above. Even assuming a sufficient supply of amorphous steel were available, TSL 4 and above would require a dramatic build up in amorphous core transformer production capacity. DOE believes this wholesale transition away from silicon steels could seriously disrupt the market, drive small businesses to either source their cores or exit the market, and lead even large businesses to consider moving production offshore or exiting the market altogether. The negative impacts are driven by the large conversion costs associated with new amorphous production lines and stranded assets of manufacturers' existing silicon steel transformer production capacity. If the higher first costs at TSL 4 drive more utilities to refurbish rather than replace failed transformers, a scenario many manufacturers predicted at the efficiency levels and prices embodied in TSL 4, reduced transformer sales could cause further declines in INPV.

At TSL 5, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$173.8 million to −$88 million, or a change in INPV of −27.8 percent to −14.1 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 230.8 percent to −$51.7 million, compared to the base-case value of $39.5 million in the year before the compliance date (2015).

TSL5 would likely shift the entire market to amorphous core transformers, leading to even greater investment needs than TSL4, driving the adverse impacts discussed above.

At TSL 6, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$197.6 million to −$77.5 million, corresponding to a change in INPV of −31.6 percent to −12.4 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 241.5 percent to −$55.9 million, compared to the base-case value of $39.5 million in the year before the compliance date (2015).

The impacts at TSL 6 are similar to those DOE expects at TSL 5, except that slightly more amorphous core production capacity will be needed because TSL 6-compliant transformers will have somewhat heavier cores and thus require more amorphous steel. This leads to slightly greater capital expenditures at TSL 6 compared to TSL 5.

At TSL 7, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from -$327.2 million to $48 million, corresponding to a change in INPV of -52.3 percent to 7.7 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 267.2 percent to -$66 million, compared to the base-case value of $39.5 million in the year before the compliance date (2015).

The impacts at TSL 7 are similar to those DOE expects at TSL 6, except that slightly more amorphous core production capacity will be needed because TSL 6-compliant transformers will have somewhat heavier cores and thus require more amorphous steel. This leads to slightly greater capital expenditures at TSL 7 compared to TSL 6, incrementally reducing industry value.

TABLE V.24—MANUFACTURER IMPACT ANALYSIS LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	Base case	Trial standard level					
			1	2	3	4	5	6
INPV	2011$M	219.5	202.7	199.9	192.8	173.4	164.2	136.4
Change in INPV	2011$M		(16.8)	(19.6)	(26.7)	(46.1)	(55.3)	(83.1)
	%		(7.7)	(8.9)	(12.2)	(21.0)	(25.2)	(37.9)
Capital Conversion Costs	2011$M		5.1	7.4	11.4	23.8	23.8	23.8
Product Conversion Costs	2011$M		2.9	3.8	5.0	8.0	8.0	8.0
Total Conversion Costs	2011$M		8.0	11.1	16.4	31.8	31.8	31.8

* **Note:** Parentheses indicate negative values.

TABLE V.25—MANUFACTURER IMPACT ANALYSIS LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

	Units	Base Case	Trial Standard Level					
			1	2	3	4	5	6
INPV	2011$M	219.5	236.4	234.6	239.6	250.4	263.4	321.5
Change in INPV	2011$M		16.9	15.0	20.1	30.9	43.9	101.9
	%		7.7	6.8	9.1	14.1	20.0	46.4
Capital Conversion Costs	2011$M		5.1	7.4	11.4	23.8	23.8	23.8
Product Conversion Costs	2011$M		2.9	3.8	5.0	8.0	8.0	8.0
Total Conversion Costs	2011$M		8.0	11.1	16.4	31.8	31.8	31.8

* **Note:** Parentheses indicate negative values.

At TSL 1, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$16.8 million to $16.9 million, corresponding to a change in INPV of −7.7 percent to 7.7 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 26.1 percent to $10.2 million, compared to the base-case value of $13.8 million in the year before the compliance date (2015).

TSL 1 provides many design paths for manufacturers to comply. DOE's engineering analysis indicates manufacturers can continue to use the low-capital butt-lap core designs, meaning investment in mitering or wound core capability is not necessary. Manufacturers can use higher-quality grain oriented steels in butt-lap designs to meet TSL1, source some or all cores, or invest in modified mitering capability.

At TSL 2, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$19.6 million to $15 million, corresponding to a change in INPV of −8.9 percent to 6.8 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 37.4 percent to $8.6 million, compared to the base-case value of $13.8 million in the year before the compliance date (2015).

TSL2 differs from TSL1 in that DL6 and DL7 must meet EL3, up from baseline for DL 6 and EL2 for DL 7, which will likely require advanced core construction techniques, including mitering or wound core designs. Much of the incremental investment needed at TSL2 is due to the increase from EL2 to EL3 in DL7, which represents more than three-quarters of the market by core weight in this superclass. This increase in stringency for DL7 drives the need for investment in mitering capacity. All major manufacturers already have mitering capability but moving the high-volume DL7 from butt-lap to mitered cores would slow throughput and require additional capacity. A range of options are still available at TSL2 as manufacturers could use higher grade steels, mitering, or wound cores. Additionally, at TSL2, manufacturers will still be able to use M6, which is common in the current market. Some manufacturers, however, usually small manufacturers, indicated during interviews they would begin to source a greater share of their cores rather than make investments in mitering machines or wound core production lines.

At TSL 3, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$26.7 million to $20.1 million, corresponding to a change in INPV of −12.2 percent to 9.1 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 53.9 percent to $6.4 million, compared to the base-case value of $13.8 million in the year before the compliance date (2015).

TSL3 represents EL4 for DL6, DL7, and DL8. DOE's engineering analysis shows that manufacturers will be able to meet EL4 using M4 or better steels. M4, however, is a thinner steel than is currently employed, which, in combination with larger cores, will dramatically slow production throughput, requiring the industry to expand capacity to maintain current shipments. This is the reason for the increase in conversion costs. In the lower-bound profitability scenario, when DOE assumes the industry cannot fully pass on incremental costs, these investments and the higher working capital needs drain cash flow and lead to the negative impacts shown in the preservation of operating profit scenario. In the high-profitability scenario, impacts are slightly positive because DOE assumes manufacturers are able to fully recoup their conversion expenditures through higher operating cash flow.

At TSL 4, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$46.1 million to $30.9 million, corresponding to a change in INPV of −21 percent to 14.1 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 102.1 percent to −$0.3 million, compared to the base-case value of $13.8 million in the year before the compliance date (2015).

TSL 4 and higher would create significant challenges for the industry

and likely disrupt the marketplace. DOE's conversion costs at TSL 4 assume the industry will entirely convert to amorphous wound core technology to meet the efficiency standards. Few manufacturers of distribution transformers in this superclass have any experience with amorphous steel or wound core technology and would face a steep learning curve. This is reflected in the large conversion costs and adverse impacts on INPV in the Preservation of Operating Profit scenario. Most manufacturers DOE interviewed expected many low-volume manufacturers to exit the DOE-covered market altogether if amorphous steel was required to meet the standard. As such, DOE believes TSL 4 could lead to greater consolidation than the industry would experience at lower TSLs.

At TSL 5, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$55.3 million to $43.9 million, corresponding to a change in INPV of −25.2 percent to 20 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 122.6 percent to −$3.1 million, compared to the base-case value of $13.8 million in the year before the compliance date (2015).

The impacts at TSL 5 are similar to those DOE expects at TSL 4, except that slightly more amorphous core production capacity will be needed because TSL 5-compliant transformers will have somewhat heavier cores and thus require more amorphous steel. This leads to slightly greater capital expenditures at TSL 5 compared to TSL 4.

At TSL 6, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$83.1 million to $101.9 million, corresponding to a change in INPV of −37.9 percent to 46.4 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 125.7 percent to −$3.5 million, compared to the base-case value of $13.8 million in the year before the compliance date (2015).

The impacts at TSL 6 are similar to those DOE expects at TSL 5, except that slightly more amorphous core production capacity will be needed because TSL 6-compliant transformers will have somewhat heavier cores and thus require more amorphous steel. This leads to slightly greater capital expenditures at TSL 6 compared to TSL 5.

TABLE V.26—MANUFACTURER IMPACT ANALYSIS MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	2011$M	91.0	87.1	84.5	79.7	77.1	71.0
Change in INPV	2011$ M	.....	(3.8)	(6.5)	(11.3)	(13.9)	(20.0)
	%	.....	(4.2)	(7.1)	(12.4)	(15.3)	(21.9)
Capital Conversion Costs	2011$M	.....	2.6	4.0	7.5	10.9	11.1
Product Conversion Costs	2011$M	.....	1.0	3.0	4.7	4.7	8.0
Total Conversion Costs	2011$M	.....	3.6	7.0	12.2	15.6	19.1

Note: Parentheses indicate negative values.

TABLE V.27—MANUFACTURER IMPACT ANALYSIS MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	2011$M	91.0	89.1	90.0	95.1	92.5	114.1
Change in INPV	2011$M	.....	(1.9)	(0.9)	4.1	1.5	23.1
	%	.....	(2.0)	(1.0)	4.5	1.7	25.4
Capital Conversion Costs	2011$M	.....	2.6	4.0	7.5	10.9	11.1
Product Conversion Costs	2011$M	.....	1.0	3.0	4.7	4.7	8.0
Total Conversion Costs	2011$M	.....	3.6	7.0	12.2	15.6	19.1

Note: Parentheses indicate negative values.

At TSL 1, DOE estimates impacts on INPV for medium-voltage dry-type distribution transformer manufacturers to range from −$3.8 million to −$1.9 million, corresponding to a change in INPV of −4.2 percent to −2.0 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 28.1 percent to $4.1 million, compared to the base-case value of $5.7 million in the year before the compliance date (2015).

TSL 1 represents EL1 for all MVDT DLs. At TSL 1, manufacturers have a variety of steels available to them, including M4, the most common steel in the superclass, in DL12, the largest DL by core steel usage. Additionally, the vast majority of the market already uses step-lap mitering technology. Therefore, DOE anticipates only moderate conversion costs for the industry, mainly associated with slower throughput due to larger cores. Some manufacturers may need to slightly expand capacity to maintain throughput and/or modify equipment to manufacturer with greater precision and tighter tolerances. In general, however, conversion expenditures should be relatively minor compared INPV. For this reason, TSL 1 yields relatively minor adverse changes to INPV in the standards case.

At TSL 2, DOE estimates impacts on INPV for medium-voltage dry-type distribution transformer manufacturers to range from −$6.5 million to −$0.9 million, corresponding to a change in INPV of −7.1 percent to −1.0 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 52.1 percent to $2.7 million, compared to the base-case value of $5.7 million in the year before the compliance date (2015).

Compared to TSL 1, TSL 2 requires EL2, rather than EL1, in DLs 10, 12, and

13B. Because M4 (as well as the commonly used H1) can still be employed to meet these levels, DOE expects similar results at TSL 2 as at TSL 1. Slightly greater conversion costs will be required as the compliant transformers will have heavier cores, all other things being equal, meaning additionally capacity may be necessary depending on each manufacturer's current capacity utilization rate. As with TSL 1, TSL 2 will not require significant changes to most manufacturers production processes because the thickness of the steels will not change significantly, if at all.

At TSL 3, DOE estimates impacts on INPV for medium-voltage dry-type distribution transformer manufacturers to range from −$11.3 million to $4.1 million, corresponding to a change in INPV of −12.4 percent to 4.5 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 90.1 to $0.6 million, compared to the base-case value of $5.7 million in the year before the compliance date (2015).

At TSL 4, DOE estimates impacts on INPV for medium-voltage dry-type distribution transformer manufacturers to range from −$13.9 million to $1.5 million, corresponding to a change in INPV of −15.3 percent to 1.7 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately −117.2 percent to −$1.0 million, compared to the base-case value of $5.7 million in the year before the compliance date (2015).

TSL 3 and TSL 4 require EL2 for DL9 and DL10, but EL4 for DL11 through DL13B, which hold the majority of the volume. Several manufacturers were concerned TSL 3 would require some of the high volume design lines to use either H1, HO, or transition entirely to amorphous wound cores. Without a cost effective M-grade steel option, the industry could face severe disruption. Even assuming a sufficient supply of Hi-B steel, a major concern of some manufacturers because it is used and generally priced for power transformer markets, relatively large expenditures would be required in R&D and engineering as most manufacturers would have to move production to steel, with which they have little experience. DOE estimates total conversion costs would more than double at TSL 3, relative to TSL 2. If, based on the movement of steel prices, EL4 can be met cost competitively only through the use of amorphous steel or an exotic design with little or no current place in scale manufacturing, manufacturers would face significant challenges that DOE believes would lead to consolidation and likely cause many low-volume manufacturers to exit the product line or source their cores.

At TSL 5, DOE estimates impacts on INPV for medium-voltage dry-type distribution transformer manufacturers to range from −$20 million to $23.1 million, corresponding to a change in INPV of −21.9 percent to 25.4 percent. At this proposed level, industry free cash flow is estimated to decrease by approximately 152.8 percent to −$3.0 million, compared to the base-case value of $5.7 million in the year before the compliance date (2015).

TSL 5 represents max-tech and yields results similar to but more severe than TSL 4 results. The entire market must convert to amorphous wound cores at TSL 5. Because the industry has no experience with wound core technology, and little, if any, experience with amorphous steel, this transition would represent a tremendous challenge for industry. Interviews suggest most manufacturers would exit the market altogether or source their cores rather than make the investments in plant and equipment and R&D required to meet these levels.

b. Impacts on Employment

Liquid Immersed. Based on interviews and industry research, DOE estimates that there are roughly 5,000 employees associated with DOE-covered liquid immersed distribution transformer production and some three-quarters of these workers are located domestically. DOE does not expect large changes in domestic employment to occur due to today's proposed standard. Manufacturers generally agreed that amorphous production is more labor-intensive and would require greater labor expenditures than traditional steel core production. So long as domestic plants are not relocated outside the country, DOE expects moderate increases in domestic employment at TSL1 and TSL2. There could be a small drop in employment at small, domestic manufacturing firms if small manufacturers began sourcing cores. This employment would presumably transfer to the core makers, some of whom are domestic and some of whom are foreign. There is a risk that energy conservation standards that largely require the use of amorphous steel could cause even large manufacturers who are currently producing transformers in the U.S. to evaluate offshore options. Faced with the prospect of wholesale changes to their production process, large investments and stranded assets, some manufacturers expect to strongly consider shifting production offshore at TSL 3, due to the increased labor expenses associated with the production processes required to make amorphous steel cores. In summary, at TSLs 1 and 2, DOE does not expect significant impacts on employment, but at TSL 3 or greater, which would require more investment, the impact is very uncertain.

Low-Voltage Dry-Type. Based on interviews with manufacturers, DOE estimates that there are approximately 2,200 employees associated with DOE-covered LVDT production. Approximately 75 percent of these employees are located outside of the U.S. Typically, high volume units are made in Mexico, taking advantage of lower labor rates, while custom designs are made closer to the manufacturer's customer base or R&D centers. DOE does not expect large changes in domestic employment to occur due to a standard. Most production already occurs outside the U.S., and, by and large, manufacturers agreed that most design changes necessary to meet higher energy conservation standards would increase labor expenditures, not decrease it. If, however, small manufacturers began sourcing cores instead of manufacturing them in-house, there could be a small drop in employment at these firms. This employment would presumably transfer to the core makers, some of whom are domestic and some of whom are foreign. In summary, DOE does not expect significant changes to domestic LVDT industry employment levels as a result of the proposed standards. Higher TSLs may lead to small declines in domestic employment as more firms will be challenged with what amounts to clean-sheet redesigns. Facing the prospect of greenfield investments, these manufacturers may elect to make those investments in lower-labor cost countries.

Medium-Voltage Dry-Type. Based on interviews with manufacturers, DOE estimates that there are approximately 1,850 employees associated with DOE-covered MVDT production. Approximately 75 percent of these employees are located domestically. With the exception of TSLs that require amorphous cores, manufacturers agreed that most design changes necessary to meet higher energy conservation standards would increase labor expenditures, not decrease them, but current production equipment would not be stranded, mitigating any incentive to move production offshore. Corroborating this, the largest manufacturer and domestic employer in this market has indicated that the standard, as proposed in this rule, will not cause their company to reconsider

production location. As such, DOE does not expect significant changes to domestic MVDT industry employment levels as a result of the standard proposed in this rule. For TSLs that would require amorphous cores, DOE does anticipate significant changes to domestic MVDT industry employment levels.

c. Impacts on Manufacturing Capacity

Based on manufacturer interviews, DOE believes that there is significant excess capacity in the distribution transformer market. Shipments in the industry are well down from their peak in 2007, according to manufacturers. Therefore, DOE does not believe there would be any production capacity constraints at TSLs that do not require dramatic transitions to amorphous cores. For those TSLs that require amorphous cores in significant volumes, DOE believes there is potential for capacity constraints in the near term due to limitations on core steel availability. However, for the levels proposed in this rule, DOE does not foresee any capacity constraints.

d. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. As discussed in section V.B.2.a, using average cost assumptions to develop an industry cash-flow estimate is inadequate to assess differential impacts among manufacturer subgroups. DOE considered four subgroups in the MIA: Liquid-immersed, dry-type medium-voltage, dry-type low-voltage, and small manufacturers. For a discussion of the impacts on the first three groups, see section IV.I.1. For a discussion of the impacts on the small manufacturer subgroup, see the Regulatory Flexibility Analysis in section VI.B and chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency. During previous stages of this rulemaking DOE identified a number of requirements in addition to amended energy conservation standards for distribution transformers. The following section briefly addresses comments DOE received with respect to cumulative regulatory burden and summarizes other key related concerns that manufacturers raised during interviews.

Many interested parties have expressed concerns about the recent implementation of previous standards for distribution transformers. For low-voltage dry-type distribution transformers, the Energy Policy Act of 2005 required compliance with NEMA TP–1 standards by the beginning of 2007. For liquid-immersed and medium-voltage dry-type transformers, DOE's 2007 energy conservation standards rulemaking required compliance by the beginning of 2010. Power Partners has stated that the last set of energy conservation standards for distribution transformers went into effect very recently and required large capital investments and retooling. Therefore, any new standards which would require additional retooling and investment would create a cumulative burden for manufacturers. (PP, No. 19 at p. 1) EEI also commented that DOE standards were increased less than 14 months ago, with effective dates of January 1, 2007 for low-voltage dry-type distribution transformers and January 1, 2010 for medium-voltage dry-type and liquid-immersed designs. (EEI, Pub. Mtg. Tr., No. 34 at p. 28)

Other factors that manufacturers stated may contribute to cumulative regulatory burden are foreign regulations and Underwriters Laboratories listing compliance requirements. Manufacturers that export their products to places such as Canada, China, Mexico, or the Middle East need to comply with foreign as well as domestic regulations. The Canadian government regulates efficiency of dry-type transformers through its Canadian Standards Association (CSA) standard C802.2–00 (effective January 1, 2005). China regulates transformer efficiency through its China Compulsory Certification (CCC) program (effective May 1, 2002), which requires manufacturers of various products including transformers to obtain the CCC Mark before exporting to or selling in the Chinese market. In Mexico, liquid-immersed units are regulated through NOM–002–SEDE–2010.

DOE discusses these and other requirements, and includes the full details of the cumulative regulatory burden analysis, in Chapter 12 of the NOPR TSD.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings through 2045 attributable to potential standards for distribution transformers, DOE compared the energy consumption of those products under the base case to their energy consumption under each TSL. Table V.28 presents the forecasted NES for each considered TSL. The savings were calculated using the approach described in section IV.G.

TABLE V.28—CUMULATIVE NATIONAL ENERGY SAVINGS FOR DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS IN 2016–2045

	Trial Standard Level						
	1	2	3	4	5	6	7
Liquid-Immersed							
Cumulative Source Savings 2045 (Quads)	0.36	0.74	0.82	1.44	1.42	1.70	2.70
Low-Voltage Dry-Type							
Cumulative Source Savings 2045 (Quads)	1.09	1.12	1.29	1.86	1.90	2.08	

TABLE V.28—CUMULATIVE NATIONAL ENERGY SAVINGS FOR DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS IN 2016–2045—Continued

	Trial Standard Level						
	1	2	3	4	5	6	7
Medium-Voltage Dry-Type							
Cumulative Source Savings 2045 (Quads)	0.06	0.13	0.23	0.23	0.37		

Chapter 10 of the NOPR TSD provides additional details on the NES values reported and also presents tables that show the magnitude of the energy savings discounted at rates of 3 percent and 7 percent. Discounted energy savings represent a policy perspective in which energy savings realized farther in the future are less significant than energy savings realized in the nearer term.

b. Net Present Value of Customer Costs and Benefits

DOE estimated the cumulative NPV to the Nation of the total costs and savings for customers that would result from the TSLs considered for distribution transformers. In accordance with the OMB's guidelines on regulatory analysis,[41] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy, and reflects the returns on real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, because recent OMB analysis has found the average rate of return on capital to be near this rate. DOE used the 3-percent rate to capture the potential effects of standards on private consumption (*e.g.,* through higher prices for products and reduced purchases of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on United States Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the past 30 years.

Table V.29 shows the customer NPV results for each TSL DOE considered for distribution transformers, using both a 7-percent and a 3-percent discount rate. In each case, the impacts cover the lifetime of products purchased in 2016–2045. See chapter 10 of the NOPR TSD for more detailed NPV results.

TABLE V.29—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR DISTRIBUTION TRANSFORMERS TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2045

	Discount rate (%)	Trial Standard Level						
		1	2	3	4	5	6	7
Liquid-Immersed								
Net Present Value (billion 2010$)	3	3.66	7.39	8.24	14.21	13.48	13.17	−1.11
	7	0.75	1.51	1.73	2.96	2.65	1.76	−8.25
Low-Voltage Dry-Type								
Net Present Value (billion 2010$)	3	7.81	7.79	8.51	11.16	9.37	2.69	
	7	2.03	1.97	2.03	2.36	1.37	−2.41	
Medium-Voltage Dry-Type								
Net Present Value (billion 2010$)	3	0.42	0.67	0.90	0.90	−0.38		
	7	0.10	0.13	0.06	0.06	−0.84		

The results shown here reflect the default product price trend, which uses constant prices. DOE conducted an NPV sensitivity analysis using alternative price trends. DOE developed one forecast in which prices decline after 2010, and one in which prices rise. The NPV results from the associated sensitivity cases are described in appendix 10–C of the NOPR TSD.

c. Indirect Impacts on Employment

As discussed above, DOE expects energy conservation standards for distribution transformers to reduce energy costs for equipment owners, and

[41] OMB Circular A–4, section E (Sept. 17, 2003). Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4.* (Last accessed March 18, 2011.)

the resulting net savings to be redirected to other forms of economic activity. Those shifts in spending and economic activity could affect the demand for labor. As described in section IV.J, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2015–2020), where these uncertainties are reduced.

The results suggest that today's proposed standards are likely to have negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 13 of the NOPR TSD presents more detailed results.

4. Impact on Utility or Performance of Equipment

DOE believes that the standards it is proposing today will not lessen the utility or performance of distribution transformers.

5. Impact of Any Lessening of Competition

DOE has also considered any lessening of competition that is likely to result from new and amended standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination to the Secretary, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

To assist the Attorney General in making such a determination, DOE has provided DOJ with copies of this notice and the TSD for review. DOE will consider DOJ's comments on the proposed rule in preparing the final rule, and DOE will publish and respond to DOJ's comments in that document.

6. Need of the Nation to Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts or costs of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of the expected energy conservation out to 2045, Table V.30 presents the estimated energy savings in terms of equivalent generating capacity for the TSLs that DOE considered in this rulemaking.

TABLE V.30—EXPECTED ENERGY SAVINGS OUT TO 2045 REPRESENTED AS EQUIVALENT GENERATING CAPACITY UNDER DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS

	Trial standard level						
	1	2	3	4	5	6	7
Liquid-Immersed (GW)	0.610	1.23	1.33	2.24	2.21	2.53	3.73
Low-Voltage Dry-Type (GW)	1.62	1.66	1.90	2.70	2.75	2.92	—
Medium-Voltage Dry-Type (GW)	0.091	0.174	0.332	0.332	0.510	—	—
Total	2.33	3.06	3.56	5.28	5.47	5.46	3.73

Energy savings from standards for distribution transformers could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.31 provides DOE's estimate of cumulative CO_2, NO_X, and Hg emissions reductions projected to result from the TSLs considered in this rulemaking. DOE reports annual CO_2, NO_X, and Hg emissions reductions for each TSL in chapter 15 of the NOPR TSD.

As discussed in section IV.M, DOE did not report SO_2 emissions reductions from power plants because, due to SO_2 emissions caps, there is uncertainty about the effect of energy conservation standards on the overall level of SO_2 emissions in the United States. DOE also did not include NO_X emissions reduction from power plants in States subject to CAIR because an energy conservation standard would not affect the overall level of NO_X emissions in those States due to the emissions caps mandated by CAIR.

TABLE V.31—SUMMARY OF EMISSIONS REDUCTION ESTIMATED FOR DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS (CUMULATIVE IN 2016–2045)

	Trial standard level						
	1	2	3	4	5	6	7
Liquid-Immersed							
CO_2 (million metric tons)	31.2	62.7	67.7	113	112	128	186
NO_X (thousand tons)	25.5	51.2	55.3	92.7	91.5	104	152
Hg (*tons*)	0.209	0.420	0.454	0.762	0.751	0.857	1.25
Low-Voltage Dry-Type							
CO_2 (million metric tons)	82.1	83.9	96.0	137	139	148	—
NO_X (thousand tons)	67.0	68.6	78.4	112	114	121	—
Hg (*tons*)	0.551	0.564	0.645	0.918	0.934	0.992	—
Medium-Voltage Dry-Type							
CO_2 (million metric tons)	4.62	8.80	16.8	16.8	25.7	—	—
NO_X (thousand tons)	3.77	7.19	13.7	13.7	21.0	—	—

TABLE V.31—SUMMARY OF EMISSIONS REDUCTION ESTIMATED FOR DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS (CUMULATIVE IN 2016–2045)—Continued

	Trial standard level						
	1	2	3	4	5	6	7
Hg (*tons*)	0.031	0.059	0.113	0.113	0.173	—	—

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the TSLs considered. As discussed in section IV.M, DOE used values for the SCC developed by an interagency process. The four values for CO_2 emissions reductions resulting from that process (expressed in 2010$) are $4.9/metric ton (the average value from a distribution that uses a 5-percent discount rate), $22.3/metric ton (the average value from a distribution that uses a 3-percent discount rate), $36.5/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $67.6/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). These values correspond to the value of emission reductions in 2010; the values for later years are higher due to increasing damages as the magnitude of climate change increases.

Table V.32 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 16 of the NOPR TSD.

TABLE V.32—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION UNDER DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS

[Million 2010$]

TSL	5% discount rate, average *	3% discount rate, average *	2.5% discount rate, average *	3% discount rate, 95th percentile *
Liquid-Immersed				
1	173	1003	1747	3051
2	350	2026	3528	6160
3	382	2219	3866	6746
4	655	3831	6681	11643
5	646	3779	6591	11486
6	752	4414	7705	13414
7	1140	6754	11811	20523
Low-Voltage Dry-Type				
1	481	2820	4921	8570
2	492	2884	5032	8764
3	562	3297	5753	10020
4	800	4693	8190	14264
5	814	4776	8336	14517
6	866	5076	8858	15427
Medium-Voltage Dry-Type				
1	27	159	277	483
2	52	302	528	919
3	98	576	1006	1751
4	98	576	1006	1751
5	151	884	1543	2688

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reducing CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this NOPR the most recent values and analyses resulting from the ongoing interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from amended standards for refrigeration products. The low and high dollar-per-ton values that DOE used are discussed in section IV.M. Table V.33 presents the cumulative present values

for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.33—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS

Million 2010$		
TSL	3% discount rate	7% discount rate
Liquid-Immersed		
1	9 to 94	3 to 32
2	19 to 191	6 to 64
3	20 to 208	7 to 69
4	35 to 356	11 to 117
5	34 to 351	11 to 115
6	40 to 408	13 to 132
7	60 to 616	19 to 194
Low-Voltage Dry-Type		
1	25 to 261	8 to 85
2	26 to 267	8 to 87
3	30 to 305	10 to 99
4	42 to 434	14 to 141
5	43 to 442	14 to 143
6	46 to 470	15 to 152
Medium-Voltage Dry-Type		
1	1 to 15	0 to 5
2	3 to 28	1 to 9
3	5 to 53	2 to 17
4	5 to 53	2 to 17
5	8 to 82	3 to 27

7. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the customer savings calculated for each TSL considered in this rulemaking. Table V.34 through Table V.36 present the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of customer savings calculated for each TSL considered in this rulemaking, at both a seven-percent and three-percent discount rate. The CO_2 values used in the columns of each table correspond to the four scenarios for the valuation of CO_2 emission reductions presented in section IV.M.

TABLE V.34—LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS: NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

[Billion 2010$]

TSL	Consumer NPV at 3% discount rate added with:			
	SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X**	SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $36.5/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $67.6/metric ton CO_2* and High Value for NO_X**
1	3.8	4.7	5.5	6.8
2	7.8	9.5	11.0	13.7
3	8.6	10.6	12.2	15.2
4	14.9	18.2	21.1	26.2
5	14.2	17.5	20.3	25.3
6	14.0	17.8	21.1	27.0
7	0.1	6.0	11.0	20.0
TSL	Consumer NPV at 7% Discount Rate added with:			
	SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X**	SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $36.5/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $67.6/metric ton CO_2* and High Value for NO_X**
1	0.9	1.8	2.5	3.8
2	1.9	3.6	5.1	7.7
3	2.1	4.0	5.6	8.5
4	3.6	6.9	9.7	14.7
5	3.3	6.5	9.3	14.3
6	2.5	6.2	9.5	15.3
7	−7.1	−1.4	3.7	12.5

* These label values represent the global SCC in 2010, in 2010$. The present values have been calculated with scenario-consistent discount rates.

** Low Value corresponds to $450 per ton of NO_X emissions. Medium Value corresponds to $2,537 per ton of NO_X emissions. High Value corresponds to $4,623 per ton of NO_X emissions.

TABLE V.35—LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS: NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

[Billion 2010$]

TSL	Consumer NPV at 3% Discount Rate added with:			
	SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X**	SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $36.5/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $67.6/metric ton CO_2* and High Value for NO_X**
1	8.3	10.8	12.9	16.6
2	8.3	10.8	13.0	16.8
3	9.1	12.0	14.4	18.8
4	12.0	16.1	19.6	25.9
5	10.2	14.4	17.9	24.3
6	3.6	8.0	11.8	18.6
TSL	Consumer NPV at 7% Discount Rate added with:			
	SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X**	SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $36.5/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $67.6/metric ton CO_2* and High Value for NO_X**
1	2.5	4.9	7.0	10.7
2	2.5	4.9	7.1	10.8
3	2.6	5.4	7.8	12.1
4	3.2	7.1	10.6	16.8
5	2.2	6.2	9.8	16.0
6	−1.5	2.7	6.5	13.2

TABLE V.36—MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS: NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

[Billion 2010$]

TSL	Consumer NPV at 3% Discount Rate added with:			
	SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X**	SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $36.5/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $67.6/metric ton CO_2* and High Value for NO_X**
1	0.5	0.6	0.7	0.9
2	0.7	1.0	1.2	1.6
3	1.0	1.5	1.9	2.7
4	1.0	1.5	1.9	2.7
5	−0.2	0.6	1.2	2.4
TSL	Consumer NPV at 7% Discount Rate added with:			
	SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X**	SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $36.5/metric ton CO_2* and Medium Value for NO_X**	SCC Value of $67.6/metric ton CO_2* and High Value for NO_X**
1	0.1	0.3	0.4	0.6
2	0.2	0.4	0.7	1.1
3	0.2	0.6	1.1	1.8
4	0.2	0.6	1.1	1.8
5	−0.7	0.1	0.7	1.9

Although adding the value of customer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. customer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2016–2045. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of CO_2 in each year. These impacts continue well beyond 2100.

8. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI))

Electrical steel is a critical consideration in the design and manufacture of distribution transformers, amounting for more than 60 percent of the distribution transformers mass in some designs. Rapid changes in the supply or pricing of certain grades can seriously hinder manufacturers' abilities to meet the market demand and, as a result, this rulemaking has given an uncommon level of attention to effects of electrical steel supply and availability.

The most important point to note is that several energy efficiency levels in each design line are reachable only by using amorphous steel, which is available in the United States from a single supplier that does not have enough present capacity to supply the industry at all-amorphous standard levels. Several more energy efficiency levels are reachable with the top grades of conventional electrical steels (''grain-oriented'') but result in distribution transformers that are unlikely to be cost-competitive with the often more-efficient amorphous units. As stated above, switching to amorphous steel is not practicable as there are availability concerns with amorphous steel.

Distribution transformers are also highly customized products; manufacturers routinely build only one or a handful of units of a particular design and require flexibility with respect to construction materials in order to do this competitively. Setting a standard that either technologically or economically required amorphous material would both eliminate a large amount of design flexibility and expose the industry to enormous risk with respect to supply and pricing of core steel. For both reasons, DOE considered electrical steel availability to be a major factor in determining which TSLs were economically justified.

C. Proposed Standards

When considering proposed standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, in light of the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B))

For today's NOPR, DOE considered the impacts of standards at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader in understanding the benefits and/or burdens of each TSL, tables in this section summarize the quantitative analytical results for each TSL, based on the assumptions and methodology discussed herein. The efficiency levels contained in each TSL are described in section V.A. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of customers who may be disproportionately affected by a national standard, and impacts on employment. Section V.B.1 presents the estimated impacts of each TSL for these subgroups. DOE discusses the impacts on employment in transformer manufacturing in section V.B.2.b, and discusses the indirect employment impacts in section V.B.3.c.

1. Benefits and Burdens of Trial Standard Levels Considered for Liquid-Immersed Distribution Transformers

Table V.37 and Table V.38 summarize the quantitative impacts estimated for each TSL for liquid-immersed distribution transformers.

TABLE V.37—SUMMARY OF ANALYTICAL RESULTS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
National Energy Savings (*quads*).	0.36	0.74	0.82	1.44	1.42	1.70	2.70
NPV of Consumer Benefits (2010$ billion)							
3% discount rate	3.66	7.39	8.24	14.21	13.48	13.17	−1.11
7% discount rate	0.75	1.51	1.73	2.96	2.65	1.76	−8.25
Cumulative Emissions Reduction							
CO_2 (million metric tons).	31.2	62.7	67.7	113	112	128	186
NO_X (thousand tons).	25.5	51.2	55.3	92.7	91.5	104	152
Hg (*tons*)	0.209	0.420	0.454	0.762	0.751	0.857	1.25
Value of Emissions Reduction							
CO_2 (2010$ million)*.	173 to 3051	350 to 6,160	382 to 6,746	655 to 11,643	646 to 11,486	752 to 13,414	1140 to 20,523
NO_X—3% discount rate (*2010$ million*).	9 to 94	19 to 191	20 to 208	35 to 356	34 to 351	40 to 408	60 to 616

TABLE V.37—SUMMARY OF ANALYTICAL RESULTS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS: NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
NO_X—7% discount rate (*2010$ million*).	3 to 32	6 to 64	7 to 69	11 to 117	11 to 115	13 to 132	19 to 194

* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.38—SUMMARY OF ANALYTICAL RESULTS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Manufacturer Impacts							
Industry NPV (2011$ million).	586 to 615	532 to 583	524 to 578	461 to 552	451 to 537	428 to 548	298 to 673
Industry NPV (% change).	(6.3) to (1.7)	(14.9) to (6.7)	(16.2) to (7.6)	(26.2) to (11.8)	(27.8) to (14.1)	(31.6) to (12.4)	(52.3) to 7.7
Consumer Mean LCC Savings (2010$)							
Design line 1	36	36	36	641	641	532	50
Design line 2	0	309	309	338	300	250	−736
Design line 3	2413	2413	3831	5591	5245	6531	4135
Design line 4	862	862	862	3356	3356	3362	1274
Design line 5	7787	7787	10288	12513	11395	12746	3626
Consumer Median PBP (years)							
Design line 1	20.2	20.2	20.2	7.9	7.9	10.0	19.2
Design line 2	0.0	6.9	6.9	8.0	9.5	11.5	24.3
Design line 3	6.3	6.3	4.0	4.7	4.6	5.2	13.3
Design line 4	5.0	5.0	5.0	4.1	4.1	4.1	14.6
Design line 5	4.0	4.0	4.2	6.3	5.7	8.3	16.9
Distribution of Consumer LCC Impacts							
Design line 1							
Net Cost (%).	57.9	57.9	57.9	4.8	4.8	8.0	55.4
Net Benefit (%).	41.8	41.8	41.8	95.0	95.0	92.0	44.6
No Impact (%).	0.2	0.2	0.2	0.2	0.2	0.0	0.0
Design line 2							
Net Cost (%).	0.0	14.2	14.2	9.8	11.2	15.8	80.2
Net Benefit (%).	0.0	85.8	85.8	90.2	88.8	84.3	19.8
No Impact (%).	100.0	0.0	0.0	0.0	0.0	0.0	0.0
Design line 3							
Net Cost (%).	15.7	15.7	11.2	4.0	5.3	3.9	25.1
Net Benefit (%).	83.0	83.0	87.7	96.0	94.6	96.1	74.9
No Impact (%).	1.4	1.4	1.2	0.0	0.0	0.0	0.0
Design line 4							
Net Cost (%).	6.0	6.0	6.0	1.9	1.9	1.9	31.1
Net Benefit (%).	93.5	93.5	93.5	97.5	97.5	97.6	63.9
No Impact (%).	0.6	0.6	0.6	0.6	0.6	0.6	0.0
Design line 5							
Net Cost (%).	19.1	19.1	13.2	7.8	10.4	7.9	39.9

TABLE V.38—SUMMARY OF ANALYTICAL RESULTS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Net Benefit (%).	80.6	80.6	86.8	92.2	89.6	92.1	60.1
No Impact (%).	0.4	0.4	0.1	0.0	0.0	0.0	0.0

First, DOE considered TSL 7, the most efficient level (max tech), which would save an estimated total of 2.70 quads of energy through 2045, an amount DOE considers significant. TSL 7 has an estimated NPV of customer benefit of −$8.25 billion using a 7 percent discount rate, and −$1.11 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 7 are 186 million metric tons of CO_2, 152 thousand tons of NO_X, and 1.25 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 7 ranges from $1,140 million to $20,523 million.

At TSL 7, the average LCC impact ranges from −$736 for design line 2 to $4,135 for design line 3. The median PBP ranges from 24.3 years for design line 2 to 13.3 years for design line 3. The share of customers experiencing a net LCC benefit ranges from 19.8 percent for design line 2 to 74.9 percent for design line 3.

At TSL 7, the projected change in INPV ranges from a decrease of $327 million to an increase of $48 million. If the decrease of $327 million were to occur, TSL 7 could result in a net loss of 52.3 percent in INPV to manufacturers of liquid-immersed distribution transformers. At TSL 7, there is a risk of very large negative impacts on manufacturers due to the substantial capital and engineering costs they would incur and the market disruption associated with the likely transition to a market entirely served by amorphous steel. Additionally, if manufacturers' concerns about their customers rebuilding rather than replacing transformers at the price points projected for TSL 7 are realized, new transformer sales would suffer and make it even more difficult to recoup investments in amorphous transformer production capacity. Additionally, if manufacturers' concerns about their customers rebuilding rather than replacing transformers at the price points projected for TSL 7 are realized, new transformer sales would suffer and make it even more difficult to recoup investments in amorphous transformer production capacity. DOE also has concerns about the competitive impact of TSL 7 on the electrical steel industry, as only one proven supplier of amorphous ribbon currently serves the U.S. market.

The Secretary tentatively concludes that, at TSL 7 for liquid-immersed distribution transformers, the benefits of energy savings, positive average customer LCC savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the potential multi-billion dollar negative net economic cost, the economic burden on customers as indicated by large PBPs, significant increases in installed cost, and the large percentage of customers who would experience LCC increases, the capital and engineering costs that could result in a large reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 7. Consequently, DOE has tentatively concluded that TSL 7 is not economically justified.

Next, DOE considered TSL 6, which would save an estimated total of 1.70 quads of energy through 2045, an amount DOE considers significant. TSL 6 has an estimated NPV of customer benefit of $1.76 billion using a 7 percent discount rate, and $13.17 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 6 are 128 million metric tons of CO_2, 104 thousand tons of NO_X, and 0.857 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 6 ranges from $752 million to $13,414 million.

At TSL 6, the average LCC impact ranges from $250 for design line 2 to $12,746 for design line 5. The median PBP ranges from 11.5 years for design line 2 to 4.1 years for design line 4. The share of customers experiencing a net LCC benefit ranges from 84.3 percent for design line 2 to 97.6 percent for design line 4.

At TSL 6, the projected change in INPV ranges from a decrease of $198 million to a decrease of $78 million. If the decrease of $198 million were to occur, TSL 6 could result in a net loss of 31.6 percent in INPV to manufacturers of liquid-immersed distribution transformers. At TSL 6, DOE recognizes the risk of very large negative impacts on manufacturers due to the large capital and engineering costs and the market disruption associated with the likely transition to a market entirely served by amorphous steel. Additionally, if manufacturers' concerns about their customers rebuilding rather than replacing their transformers at the price points projected for TSL 6 are realized, new transformer sales would suffer and make it even more difficult to recoup investments in amorphous transformer production capacity.

The energy savings under TSL 6 are achievable only by using amorphous steel, which is currently available from a single supplier that has annual production capacity of approximately 100,000 tons, the vast majority of which serves global demand. Thus, current availability is far below the amount that would be required to meet the U.S. liquid-immersed transformer market demand of approximately 250,000 tons. Electrical steel is a critical consideration in the manufacture of distribution transformers, accounting for more than 60 percent of the transformer's mass in some designs. DOE is concerned that the current supplier, together with others that might enter the market, would not be able to increase production of amorphous steel rapidly enough to supply the amounts that would be needed by transformer manufacturers before 2015. Therefore, setting a standard that requires amorphous material would expose the industry to enormous risk with respect to core steel supply. DOE also has concerns about the competitive impact of TSL 6 on the electrical steel industry. TSL 6 could jeopardize the ability of silicon steels to compete with amorphous metal, which risks upsetting competitive balance among steel suppliers and between them and their customers.

The Secretary tentatively concludes that, at TSL 6 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the capital and

engineering costs that could result in a large reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 6. Consequently, DOE has tentatively concluded that TSL 6 is not economically justified.

Next, DOE considered TSL 5, which would save an estimated total of 1.42 quads of energy through 2045, an amount DOE considers significant. TSL 5 has an estimated NPV of customer benefit of $2.65 billion using a 7 percent discount rate, and $13.48 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 5 are 112 million metric tons of CO_2, 104 thousand tons of NO_X, and 0.751 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $646 million to $11,486 million.

At TSL 5, the average LCC impact ranges from $300 for design line 2 to $11,395 for design line 5. The median PBP ranges from 9.5 years for design line 2 to 4.1 years for design line 4. The share of customers experiencing a net LCC benefit ranges from 88.8 percent for design line 2 to 97.5 percent for design line 4.

At TSL 5, the projected change in INPV ranges from a decrease of $174 million to a decrease of $88 million. If the decrease of $174 million were to occur, TSL 5 could result in a net loss of 27.8 percent in INPV to manufacturers of liquid-immersed distribution transformers. At TSL 5, DOE recognizes the risk of very large negative impacts on manufacturers due to the large capital and engineering costs they would incur and the market disruption associated with the likely transition to a market almost entirely served by amorphous steel. Additionally, if manufacturers' concerns about their customers rebuilding rather than replacing transformers at the price points projected for TSL 5 are realized, new transformer sales would suffer and make it even more difficult to recoup investments in amorphous transformer production capacity.

The energy savings under TSL 5 are achievable only by using amorphous steel, which is currently available from a single supplier that has annual production capacity of 100,000 tons, far below the amount that would be required to meet the U.S. liquid-immersed transformer market demand of approximately 250,000 tons. DOE is concerned that the current supplier, together with others that might enter the market, would not be able to increase production of amorphous steel rapidly enough to supply the amounts that would be needed by transformer manufacturers before 2015. Therefore, setting a standard that requires amorphous material would expose the industry to enormous risk with respect to core steel supply. As with higher TSLs, DOE also has concerns about the competitive impact of TSL 5 on the electrical steel manufacturing industry. TSL 5 could jeopardize the ability of silicon steels to compete with amorphous metal, which risks upsetting competitive balance among steel suppliers and between them and their customers.

The Secretary tentatively concludes that, at TSL 5 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the capital and engineering costs that could result in a large reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 5. Consequently, DOE has concluded that TSL 5 is not economically justified.

Next, DOE considered TSL 4, which would save an estimated total of 1.44 quads of energy through 2045, an amount DOE considers significant. TSL 4 has an estimated NPV of customer benefit of $2.96 billion using a 7 percent discount rate, and $14.21 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 4 are 113 million metric tons of CO_2, 92.7 thousand tons of NO_X, and 0.762 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $655 million to $11,643 million.

At TSL 4, the average LCC impact ranges from $338 for design line 2 to $12,513 for design line 5. The median PBP ranges from 8.0 years for design line 2 to 4.1 years for design line 4. The share of customers experiencing a net LCC benefit ranges from 90.2 percent for design line 2 to 97.5 percent for design line 4.

At TSL 4, the projected change in INPV ranges from a decrease of $164 million to a decrease of $74 million. If the decrease of $164 million were to occur, TSL 4 could result in a net loss of 26.2 percent in INPV to manufacturers of liquid-immersed distribution transformers. At TSL 4, DOE recognizes the risk of large negative impacts on manufacturers due to the substantial capital and engineering costs they would incur. Additionally, if manufacturers' concerns about their customers rebuilding rather than replacing transformers at the price points projected for TSL 4 are realized, new transformer sales would suffer and make it even more difficult to recoup investments in amorphous transformer production capacity.

DOE is also concerned that TSL 4, like the higher TSLs, will require amorphous steel to be competitive in many applications and at least a few design lines. As stated previously, the available supply of amorphous steel is well below the amount that would likely be required to meet the U.S. liquid-immersed transformer market demand. DOE is concerned that the current supplier, together with others that might enter the market, would not be able to increase production of amorphous steel rapidly enough to supply the amounts that would be needed by transformer manufacturers before 2015. Therefore, setting a standard that requires amorphous material would expose the industry to enormous risk with respect to core steel supply.

In addition, depending on how steel prices react to a standard, DOE believes TSL 4 could threaten the viability of a place in the market for conventional steel. Therefore, as with higher TSLs, DOE has concerns about the competitive impact of TSL 4 on the electrical steel manufacturing industry.

The Secretary tentatively concludes that, at TSL 4 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the capital and engineering costs that could result in a large reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 4. Consequently, DOE has tentatively concluded that TSL 4 is not economically justified.

Next, DOE considered TSL 3, which would save an estimated total of 0.82 quads of energy through 2045, an amount DOE considers significant. TSL 3 has an estimated NPV of customer benefit of $1.73 billion using a 7 percent discount rate, and $8.24 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 3 are 67.7 million metric tons of CO_2, 55.3 thousand tons of NO_X, and 0.454 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $382 million to $6,746 million.

At TSL 3, the average LCC impact ranges from $36 for design line 1 to $10,288 for design line 5. The median PBP ranges from 20.2 years for design line 1 to 4.0 years for design line 3. The share of customers experiencing a net LCC benefit ranges from 41.8 percent for design line 1 to 93.5 percent for design line 4.

At TSL 3, the projected change in INPV ranges from a decrease of $101 million to a decrease of $48 million. If the decrease of $101 million were to occur, TSL 3 could result in a net loss of 16.2 percent in INPV to manufacturers. At TSL 3, DOE recognizes the risk of large negative impacts on manufacturers due to the large capital and engineering costs they would incur.

Although the industry can manufacture liquid-immersed transformers at TSL 3 from M3 or lower grade steels, the positive LCC and national impacts results described above are based on lowest first-cost designs, which include amorphous steel for all the design lines analyzed. As is the case with higher TSLs, DOE is concerned that the current supplier, together with others that might enter the market, would not be able to increase production of amorphous steel rapidly enough to supply the amounts that would be needed by transformer manufacturers before 2015. If manufacturers were to meet standards at TSL 3 using M3 or lower grade steels, DOE's analysis shows that the LCC impacts are negative.[42]

The Secretary tentatively concludes that, at TSL 3 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the capital and engineering costs that could result in a large reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 3 in a cost-effective manner. Consequently, DOE has tentatively concluded that TSL 3 is not economically justified.

Next, DOE considered TSL 2, which would save an estimated total of 0.74 quads of energy through 2045, an amount DOE considers significant. TSL 2 has an estimated NPV of customer benefit of $1.51 billion using a 7 percent discount rate, and $7.39 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 2 are 62.7 million metric tons of CO_2, 51.2 thousand tons of NO_X, and 0.42 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 2 ranges from $350 million to $6,160 million.

At TSL 2, the average LCC impact ranges from $0 for design line 2 to $7,787 for design line 5. The median PBP ranges from 20.2 years for design line 1 to 4.0 years for design line 5. The share of customers experiencing a net LCC benefit ranges from 41.8 percent for design line 1 to 93.5 percent for design line 4.

At TSL 2, the projected change in INPV ranges from a decrease of $93 million to a decrease of $42 million. If the decrease of $93 million were to occur, TSL 2 could result in a net loss of 14.9 percent in INPV to manufacturers of liquid-immersed distribution transformers. At TSL 2, DOE recognizes the risk of negative impacts on manufacturers due to the significant capital and engineering costs they would incur.

Although the industry can manufacture liquid-immersed transformers at TSL 2 from M3 or lower grade steels, the positive LCC and national impacts results described above are based on lowest first-cost designs, which include amorphous steel for design line 2. This design line represents approximately 44 percent of all liquid-immersed transformer shipments by MVA. Amorphous steel is available from a single supplier whose annual production capacity is below the amount that would be required to meet the demand for design line 2 under TSL 2. DOE is concerned that the current supplier, together with others that might enter the market, would not be able to increase production of amorphous steel rapidly enough to supply the amounts that would be needed by transformer manufacturers before 2015. If manufacturers were to meet standards at TSL 2 using M3 or lower grade steels, DOE's analysis shows that the LCC impacts would be negative.

The Secretary tentatively concludes that, at TSL 2 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the capital and engineering costs that could result in a reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 2 in a cost-effective manner. Consequently, DOE has tentatively concluded that TSL 2 is not economically justified.

Next, DOE considered TSL 1, which would save an estimated total of 0.36 quads of energy through 2045, an amount DOE considers significant. TSL 1 has an estimated NPV of customer benefit of $0.75 billion using a 7 percent discount rate, and $3.66 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 1 are 31.2 million metric tons of CO_2, 25.5 thousand tons of NO_X, and 0.209 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 1 ranges from $173 million to $3,051 million.

At TSL 1, the average LCC impact ranges from $0 for design line 2 to $7,787 for design line 5. The median PBP ranges from 20.2 years for design line 1 to 4.0 years for design line 5. The share of customers experiencing a net LCC benefit ranges from 41.8 percent for design line 1 to 93.5 percent for design line 4.

At TSL 1, the projected change in INPV ranges from a decrease of $40 million to a decrease of $10 million. If the decrease of $40 million were to occur, TSL 1 could result in a net loss of 6.3 percent in INPV to manufacturers of liquid-immersed distribution transformers.

The energy savings under TSL 1 are achievable without using amorphous steel. Therefore, the aforementioned risks that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards, or that manufacturers may be exposed to increased material prices due to the concentration of core material to a single supplier are not present under TSL 1.

After considering the analysis and weighing the benefits and the burdens, DOE has tentatively concluded that at TSL 1 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, emission reductions, and the estimated monetary value of the emissions reductions would outweigh the potential reduction in INPV for manufacturers. The Secretary of Energy has concluded that TSL 1 would save a significant amount of energy and is technologically feasible and economically justified. In addition, during the negotiated rulemaking, NEMA and AK Steel recommended TSL 1. For the above considerations, DOE today proposes to adopt the energy conservation standards for liquid-

[42] DOE conducted a sensitivity analysis where LCC results are presented for liquid-immersed transformers without amorphous steel; see in appendix 8–C in the NOPR TSD.

immersed distribution transformers at TSL 1. Table V.39 presents the proposed energy conservation standards for liquid-immersed distribution transformers.

TABLE V.39—PROPOSED ENERGY CONSERVATION STANDARDS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS

Electrical efficiency by kVA and equipment class			
Equipment class 1		Equipment class 2	
kVA	Percent	kVA	Percent
10	98.70	15	98.65
15	98.82	30	98.83
25	98.95	45	98.92
37.5	99.05	75	99.03
50	99.11	112.5	99.11
75	99.19	150	99.16
100	99.25	225	99.23
167	99.33	300	99.27
250	99.39	500	99.35
333	99.43	750	99.40
500	99.49	1000	99.43
		1500	99.48

2. Benefits and Burdens of Trial Standard Levels Considered for Low-Voltage, Dry-Type Distribution Transformers

Table V.40 and Table V.41 summarize the quantitative impacts estimated for each TSL for low-voltage, dry-type distribution transformers.

TABLE V.40—SUMMARY OF ANALYTICAL RESULTS FOR LOW-VOLTAGE, DRY-TYPE DISTRIBUTION TRANSFORMERS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
National Energy Savings (quads)	1.09	1.12	1.29	1.86	1.90	2.08
NPV of Consumer Benefits (2010$ billion)						
3% discount rate	7.81	7.79	8.51	11.16	9.37	2.69
7% discount rate	2.03	1.97	2.03	2.36	1.37	−2.41
Cumulative Emissions Reduction						
CO_2 (million metric tons)	82.1	83.9	96.0	137	139	148
NO_X (thousand tons)	67.0	68.6	78.4	112	114	121
Hg (tons)	0.551	0.564	0.645	0.918	0.934	0.992
Value of Emissions Reduction						
CO_2 (2010$ million)*	481 to 8570	492 to 8764	562 to 10020	800 to 14264	814 to 14517	866 to 15427
NO_X—3% discount rate (2010$ million)	25 to 261	26 to 267	30 to 305	42 to 434	43 to 442	46 to 470
NO_X—7% discount rate (2010$ million)	8 to 85	8 to 87	10 to 99	14 to 141	14 to 143	15 to 152

* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.41—SUMMARY OF ANALYTICAL RESULTS FOR LOW-VOLTAGE, DRY-TYPE DISTRIBUTION TRANSFORMERS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Manufacturer Impacts						
Industry NPV (2011$ million)	203 to 236	200 to 235	193 to 240	173 to 250	164 to 263	136 to 322
Industry NPV (% change)	(7.7) to 7.7	(8.9) to 6.8	(12.2) to 9.1	(21.0) to 14.1	(25.2) to 20.0	(37.9) to 46.4
Consumer Mean LCC Savings (2010$)						
Design line 6	0	−125	335	187	187	−881
Design line 7	1714	1714	1793	2270	2270	270

TABLE V.41—SUMMARY OF ANALYTICAL RESULTS FOR LOW-VOLTAGE, DRY-TYPE DISTRIBUTION TRANSFORMERS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Design line 8	2476	2476	2625	4145	−2812	−2812
Consumer Median PBP (years)						
Design line 6	0.0	24.7	13.0	16.3	16.3	32.4
Design line 7	4.5	4.5	4.7	6.9	6.9	18.1
Design line 8	8.4	8.4	12.3	11.0	24.5	24.5
Distribution of Consumer LCC Impacts						
Design line 6						
Net Cost (%)	0.0	71.5	17.6	36.2	36.2	93.4
Net Benefit (%)	0.0	28.5	82.4	63.8	63.8	6.6
No Impact (%)	100.0	0.0	0.0	0.0	0.0	0.0
Design line 7						
Net Cost (%)	1.8	1.8	2.0	3.7	3.7	46.4
Net Benefit (%)	98.2	98.2	98.0	96.3	96.3	53.6
No Impact (%)	0.0	0.0	0.0	0.0	0.0	0.0
Design line 8						
Net Cost (%)	5.2	5.2	15.3	10.5	78.5	78.5
Net Benefit (%)	94.8	94.8	84.7	89.5	21.5	21.5
No Impact (%)	0.0	0.0	0.0	0.0	0.0	0.0

First, DOE considered TSL 6, the most efficient level (max tech), which would save an estimated total of 2.08 quads of energy through 2045, an amount DOE considers significant. TSL 6 has an estimated NPV of customer benefit of −$2.41 billion using a 7 percent discount rate, and $2.69 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 6 are 148 million metric tons of CO_2, 121 thousand tons of NO_X, and 0.992 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 6 ranges from $866 million to $15,427 million.

At TSL 6, the average LCC impact ranges from −$2,812 for design line 8 to $270 for design line 7. The median PBP ranges from 32.4 years for design line 6 to 18.1 years for design line 7. The share of customers experiencing a net LCC benefit ranges from 6.6 percent for design line 6 to 53.6 percent for design line 7.

At TSL 6, the projected change in INPV ranges from a decrease of $83 million to an increase of $102 million. If the decrease of $83 million occurs, TSL 6 could result in a net loss of 37.9 percent in INPV to manufacturers of low-voltage dry-type distribution transformers. At TSL 6, DOE recognizes the risk of very large negative impacts on the industry. TSL 6 would require manufacturers to scrap nearly all production assets and create transformer designs with which most, if not all, have no experience. DOE is concerned, in particular, about large impacts on small businesses, which may not be able to procure sufficient volume of amorphous steel at competitive prices, if at all.

The Secretary tentatively concludes that, at TSL 6 for low-voltage dry-type distribution transformers, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on customers (as indicated by negative average LCC savings, large PBPs, and the large percentage of customers who would experience LCC increases at design line 6 and design line 8), the potential for very large negative impacts on the manufacturers, and the potential burden on small manufacturers. Consequently, DOE has tentatively concluded that TSL 6 is not economically justified.

Next, DOE considered TSL 5, which would save an estimated total of 1.90 quads of energy through 2045, an amount DOE considers significant. TSL 5 has an estimated NPV of customer benefit of $1.37 billion using a 7 percent discount rate, and $9.37 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 5 are 139 million metric tons of CO_2, 114 thousand tons of NO_X, and 0.934 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $814 million to $14,517 million.

At TSL 5, the average LCC impact ranges from −$2,812 for design line 8 to $2,270 for design line 7. The median PBP ranges from 24.5 years for design line 8 to 6.9 years for design line 7. The share of customers experiencing a net LCC benefit ranges from 21.5 percent for design line 8 to 96.3 percent for design line 7.

At TSL 5, the projected change in INPV ranges from a decrease of $55 million to an increase of $44 million. If the decrease of $55 million occurs, TSL 5 could result in a net loss of 25.2 percent in INPV to manufacturers of low-voltage dry-type distribution transformers. At TSL 5, DOE recognizes the risk of very large negative impacts on the industry. TSL 5 would require manufacturers to scrap nearly all production assets and create transformer designs with which most, if not all, have no experience. DOE is concerned, in particular, about large impacts on small businesses, which may not be able to procure sufficient volume of amorphous steel at competitive prices, if at all.

The Secretary tentatively concludes that, at TSL 5 for low-voltage dry-type distribution transformers, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on customers at design line 8 (as indicated by negative average LCC savings, large PBPs, and the large percentage of customers who would experience LCC increases), the potential for very large negative impacts on the manufacturers, and the potential burden on small manufacturers. Consequently, DOE has tentatively concluded that TSL 5 is not economically justified.

Next, DOE considered TSL 4, which would save an estimated total of 1.86 quads of energy through 2045, an amount DOE considers significant. TSL 4 has an estimated NPV of customer

benefit of $2.36 billion using a 7 percent discount rate, and $11.16 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 4 are 137 million metric tons of CO_2, 112 thousand tons of NO_X, and 0.918 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $800 million to $14,264 million.

At TSL 4, the average LCC impact ranges from $187 for design line 6 to $4,145 for design line 8. The median PBP ranges from 16.3 years for design line 6 to 6.9 years for design line 7. The share of customers experiencing a net LCC benefit ranges from 63.8 percent for design line 6 to 96.3 percent for design line 7.

At TSL 4, the projected change in INPV ranges from a decrease of $46 million to an increase of $31 million. If the decrease of $46 million occurs, TSL 4 could result in a net loss of 21 percent in INPV to manufacturers of low-voltage dry-type distribution transformers. At TSL 4, DOE recognizes the risk of very large negative impacts on the industry. As with the higher TSLs, TSL 4 would require manufacturers to scrap nearly all production assets and create transformer designs with which most, if not all, have no experience. DOE is concerned, in particular, about large impacts on small businesses, which may not be able to procure sufficient volume of amorphous steel at competitive prices, if at all.

The Secretary tentatively concludes that, at TSL 4 for low-voltage dry-type distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the potential for very large negative impacts on the manufacturers, and the potential burden on small manufacturers. Consequently, DOE has tentatively concluded that TSL 4 is not economically justified.

Next, DOE considered TSL 3, which would save an estimated total of 1.29 quads of energy through 2045, an amount DOE considers significant. TSL 3 has an estimated NPV of customer benefit of $2.03 billion using a 7 percent discount rate, and $8.51 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 3 are 96.0 million metric tons of CO_2, 78.4 thousand tons of NO_X, and 0.645 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $562 million to $10,020 million.

At TSL 3, the average LCC impact ranges from $335 for design line 6 to $2,625 for design line 8. The median PBP ranges from 13.0 years for design line 6 to 4.7 years for design line 7. The share of customers experiencing a net LCC benefit ranges from 82.4 percent for design line 6 to 98.0 percent for design line 7.

At TSL 3, the projected change in INPV ranges from a decrease of $27 million to an increase of $20 million. If the decrease of $27 million occurs, TSL 3 could result in a net loss of 12.2 percent in INPV to manufacturers of low-voltage dry-type distribution transformers. At TSL 3, DOE recognizes the risk of negative impacts on the industry, particularly the small manufacturers. While TSL 3 could likely be met with M4 steel, DOE's analysis shows that this design option is at the edge of its technical feasibility at the efficiency levels comprised by TSL 3. Although these levels could be met with M3 or better steels, DOE is concerned that a significant number of small manufacturers would be unable to acquire these steels in sufficient supply and quality to compete. Additionally, TSL 3 requires significant investment in advanced core construction equipment such are step-lap mitering machines or wound core production lines, as butt lap designs, even with high-grade designs, are unlikely to comply. Given their more limited engineering resources and capital, small businesses may find it difficult to make these designs at competitive prices and may have to exit the market. At the same time, however, those small manufacturers may be able to source their cores—and many are doing so to a significant extent currently—which could mitigate impacts.

The Secretary tentatively concludes that, at TSL 3 for low-voltage dry-type distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the risk of negative impacts on the industry, particularly the small manufacturers. Consequently, DOE has tentatively concluded that TSL 3 is not economically justified.

Next, DOE considered TSL 2, which would save an estimated total of 1.12 quads of energy through 2045, an amount DOE considers significant. TSL 2 has an estimated NPV of customer benefit of $1.97 billion using a 7 percent discount rate, and $7.79 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 2 are 83.9 million metric tons of CO_2, 68.6 thousand tons of NO_X, and 0.564 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 2 ranges from $492 million to $8,764 million.

At TSL 2, the average LCC impact ranges from −$125 for design line 6 to $2,476 for design line 8. The median PBP ranges from 24.7 years for design line 6 to 4.5 years for design line 7. The share of customers experiencing a net LCC benefit ranges from 28.5 percent for design line 6 to 98.2 percent for design line 7.

At TSL 2, the projected change in INPV ranges from a decrease of $20 million to an increase of $15 million. If the decrease of $20 million occurs, TSL 2 could result in a net loss of 8.9 percent in INPV to manufacturers of low-voltage dry-type distribution transformers. At TSL 2, DOE recognizes the risk of negative impacts on the industry, particularly small manufacturers. TSL 2 would likely require mitering or wound core technology, which many small businesses do not have in-house. Given their more limited engineering resources and capital, small businesses may find it difficult to make these designs at competitive prices and may have to exit the market. At the same time, however, those small manufacturers may be able to source their cores—and many are doing so to a significant extent currently—which could mitigate impacts.

The Secretary tentatively concludes that, at TSL 2 for low-voltage dry-type distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the risk of negative impacts on the industry, particularly regarding the uncertainty over how small businesses would be impacted. Consequently, DOE has tentatively concluded that TSL 2 is not economically justified.

Next, DOE considered TSL 1, which would save an estimated total of 1.09 quads of energy through 2045, an amount DOE considers significant. TSL 1 has an estimated NPV of customer benefit of $2.03 billion using a 7 percent discount rate, and $7.81 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 1 are 82.1 million metric tons of CO_2, 67.0 thousand tons of NO_X, and 0.551 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 1 ranges from $481 million to $8,570 million.

At TSL 1, the average LCC impact ranges from $1,714 for design line 7 to $2,476 for design line 8. The median PBP ranges from 8.4 years for design line 8 to 4.5 years for design line 7. The

share of customers experiencing a net LCC benefit ranges from 94.8 percent for design line 8 to 98.2 percent for design line 7.

At TSL 1, the projected change in INPV ranges from a decrease of $17 million to an increase of $17 million. If the decrease of $17 million occurs, TSL 1 could result in a net loss of 7.7 percent in INPV to manufacturers of low-voltage dry-type distribution transformers. At TSL 1, DOE recognizes the risk of small negative impacts on the industry if manufacturers are not able to recoup their investment costs. At this level, small manufacturers can still use butt-lap construction and steels with which they generally have experience.

After considering the analysis and weighing the benefits and the burdens, DOE has tentatively concluded that at TSL 1 for low-voltage, dry-type distribution transformers, the benefits of energy savings, NPV of customer benefit, positive customer LCC impacts, emissions reductions and the estimated monetary value of the emissions reductions would outweigh the risk of small negative impacts on the manufacturers. In particular, the Secretary has concluded that TSL 1 would save a significant amount of energy and is technologically feasible and economically justified. NEMA also recommended TSL 1 for low-voltage, dry-type distribution transformers during the negotiated rulemaking. For the reasons given above, DOE today proposes to adopt the energy conservation standards for low-voltage dry-type distribution transformers at TSL 1. Table V.42 presents the proposed energy conservation standards for low-voltage, dry-type distribution transformers.

TABLE V.42—PROPOSED ENERGY CONSERVATION STANDARDS FOR LOW-VOLTAGE, DRY-TYPE DISTRIBUTION TRANSFORMERS

Electrical efficiency by kVA and equipment class			
Equipment class 3		Equipment class 4	
kVA	%	kVA	%
15	97.73	15	97.44
25	98.00	30	97.95
37.5	98.20	45	98.20
50	98.31	75	98.47
75	98.50	112.5	98.66
100	98.60	150	98.78
167	98.75	225	98.92
250	98.87	300	99.02
333	98.94	500	99.17
		750	99.27
		1000	99.34

3. Benefits and Burdens of Trial Standard Levels Considered for Medium-Voltage, Dry-Type Distribution Transformers

Table V.43 and Table V.44 summarize the quantitative impacts estimated for each TSL for medium-voltage, dry-type distribution transformers.

TABLE V.43—SUMMARY OF ANALYTICAL RESULTS FOR MEDIUM-VOLTAGE, DRY-TYPE DISTRIBUTION TRANSFORMERS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
National Energy Savings (*quads*)	0.06	0.13	0.23	0.23	0.37
NPV of Consumer Benefits (*2010$ billion*)					
3% discount rate	0.42	0.67	0.90	0.90	−0.38
7% discount rate	0.10	0.13	0.06	0.06	−0.84
Cumulative Emissions Reduction					
CO_2 (million metric tons)	4.62	8.80	16.8	16.8	25.7
NO_X (thousand tons)	3.77	7.19	13.7	13.7	21.0
Hg (*tons*)	0.031	0.059	0.113	0.113	0.173
Value of Emissions Reduction					
CO_2 (2010$ million)*	27 to 483	52 to 919	98 to 1751	98 to 1751	151 to 2688
NO_X—3% discount rate (*2010$ million*)	1 to 15	3 to 28	5 to 53	5 to 53	8 to 82
NO_X—7% discount rate (*2010$ million*)	0 to 5	1 to 9	2 to 17	2 to 17	3 to 27

* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.44—SUMMARY OF ANALYTICAL RESULTS FOR MEDIUM-VOLTAGE, DRY-TYPE DISTRIBUTION TRANSFORMERS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Manufacturer Impacts					
Industry NPV (2011$ million)	87 to 89	85 to 90	80 to 95	77 to 93	71 to 114
Industry NPV (% change)	(4.2) to (2.0)	(7.1) to (1.0)	(12.4) to 4.5	(15.3) to 1.7	(21.9) to 25.4
Consumer Mean LCC Savings (2010$)					
Design line 9	849	1659	1659	1659	237
Design line 10	4509	4791	4791	4791	−12756
Design line 11	1043	202	2000	2000	−3160
Design line 12	4518	6332	8860	8860	−12420
Design line 13A	25	447	−846	−846	−11077
Design line 13B	2734	−961	384	384	−5403
Consumer Median PBP (years)					
Design line 9	2.6	6.2	6.2	6.2	19.1
Design line 10	1.1	8.8	8.8	8.8	28.4
Design line 11	10.7	17.6	14.1	14.1	24.5
Design line 12	6.3	13.5	13.0	13.0	25.9
Design line 13A	16.5	16.6	21.7	21.7	37.1
Design line 13B	4.6	20.4	19.3	19.3	21.9
Distribution of Consumer LCC Impacts					
Design line 9					
Net Cost (%)	3.4	5.7	5.7	5.7	53.4
Net Benefit (%)	83.4	94.3	94.3	94.3	46.6
No Impact (%)	13.3	0.0	0.0	0.0	0.0
Design line 10					
Net Cost (%)	0.7	16.7	16.7	16.7	84.8
Net Benefit (%)	98.8	83.3	83.3	83.3	15.2
No Impact (%)	0.5	0.0	0.0	0.0	0.0
Design line 11					
Net Cost (%)	20.6	49.5	25.7	25.7	76.1
Net Benefit (%)	79.4	50.5	74.3	74.3	23.9
No Impact (%)	0.0	0.0	0.0	0.0	0.0
Design line 12					
Net Cost (%)	6.7	23.5	18.1	18.1	81.1
Net Benefit (%)	93.3	76.5	81.9	81.9	18.9
No Impact (%)	0.0	0.0	0.0	0.0	0.0
Design line 13A					
Net Cost (%)	52.2	42.3	64.4	64.4	97.1
Net Benefit (%)	47.8	57.7	35.6	35.6	2.9
No Impact (%)	0.0	0.0	0.0	0.0	0.0
Design line 13B					
Net Cost (%)	28.5	59.6	52.7	52.7	67.2
Net Benefit (%)	71.3	40.4	47.3	47.3	32.8
No Impact (%)	0.2	0.0	0.0	0.0	0.0

First, DOE considered TSL 5, the most efficient level (max tech), which would save an estimated total of 0.37 quads of energy through 2045, an amount DOE considers significant. TSL 5 has an estimated NPV of customer benefit of −$0.84 billion using a 7 percent discount rate, and −$0.38 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 5 are 25.7 million metric tons of CO_2, 21.0 thousand tons of NO_X, and 0.173 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $151 million to $2,688 million.

At TSL 5, the average LCC impact ranges from −$12,756 for design line 10 to −$237 for design line 9. The median PBP ranges from 37.1 years for design line 13A to 19.1 years for design line 9. The share of customers experiencing a net LCC benefit ranges from 2.9 percent for design line 13A to 46.6 percent for design line 9.

At TSL 5, the projected change in INPV ranges from a decrease of $20 million to an increase of $23 million. If the decrease of $20 million occurs, TSL 5 could result in a net loss of 21.9 percent in INPV to manufacturers of medium-voltage dry-type distribution transformers. At TSL 5, DOE recognizes the risk of very large negative impacts on industry because they would likely be forced to move to amorphous technology, with which there is no experience in this market.

The Secretary tentatively concludes that, at TSL 5 for medium-voltage dry-type distribution transformers, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the negative NPV of customer benefit, the economic burden on customers (as indicated by negative average LCC savings, large PBPs, and the large percentage of customers who would experience LCC increases), and

the risk of very large negative impacts on the manufacturers. Consequently, DOE has tentatively concluded that TSL 5 is not economically justified.

Next, DOE considered TSL 4, which would save an estimated total of 0.23 quads of energy through 2045, an amount DOE considers significant. TSL 4 has an estimated NPV of customer benefit of $0.06 billion using a 7 percent discount rate, and $0.90 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 4 are 16.8 million metric tons of CO_2, 13.7 thousand tons of NO_X, and 0.113 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $98 million to $1,751 million.

At TSL 4, the average LCC impact ranges from −$846 for design line 13A to $8,860 for design line 12. The median PBP ranges from 21.7 years for design line 13A to 6.2 years for design line 9. The share of customers experiencing a net LCC benefit ranges from 35.6 percent for design line 13A to 94.3 percent for design line 9.

At TSL 4, the projected change in INPV ranges from a decrease of $14 million to an increase of $2 million. If the decrease of $14 million occurs, TSL 4 could result in a net loss of 15.3 percent in INPV to manufacturers of medium-voltage dry-type distribution transformers. At TSL 4, DOE recognizes the risk of very large negative impacts on most manufacturers in the industry who have little experience with the steels that would be required. Small businesses, in particular, with limited engineering resources, may not be able to convert their lines to employ thinner steels and may be disadvantaged with respect to access to key materials, including Hi-B steels.

The Secretary tentatively concludes that, at TSL 4 for medium-voltage dry-type distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive impacts on consumers (as indicated by positive average LCC savings, favorable PBPs, and the large percentage of customers who would experience LCC benefits), emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the risk of very large negative impacts on the manufacturers, particularly small businesses. Consequently, DOE has tentatively concluded that TSL 4 is not economically justified.

Next, DOE considered TSL 3, which would save an estimated total of 0.23 quads of energy through 2045, an amount DOE considers significant. TSL 3 has an estimated NPV of customer benefit of $0.06 billion using a 7 percent discount rate, and $0.90 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 3 are 16.8 million metric tons of CO_2, 13.7 thousand tons of NO_X, and 0.113 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $98 million to $1,751 million.

At TSL 3, the average LCC impact ranges from −$846 for design line 13A to $8,860 for design line 12. The median PBP ranges from 21.7 years for design line 13A to 6.2 years for design line 9. The share of customers experiencing a net LCC benefit ranges from 35.6 percent for design line 13A to 94.3 percent for design line 9.

At TSL 3, the projected change in INPV ranges from a decrease of $11 million to an increase of $4 million. If the decrease of $11 million occurs, TSL 3 could result in a net loss of 12.4 percent in INPV to manufacturers of medium-voltage dry-type transformers. At TSL 3, DOE recognizes the risk of large negative impacts on most manufacturers in the industry who have little experience with the steels that would be required. As with TSL 4, small businesses, in particular, with limited engineering resources, may not be able to convert their lines to employ thinner steels and may be disadvantaged with respect to access to key materials, including Hi-B steels.

The Secretary tentatively concludes that, at TSL 3 for medium-voltage dry-type distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive impacts on consumers (as indicated by positive average LCC savings, favorable PBPs, and the large percentage of customers who would experience LCC benefits), emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the risk of large negative impacts on the manufacturers, particularly small businesses. Consequently, DOE has tentatively concluded that TSL 3 is not economically justified.

Next, DOE considered TSL 2, which would save an estimated total of 0.13 quads of energy through 2045, an amount DOE considers significant. TSL 2 has an estimated NPV of customer benefit of $0.10 billion using a 7 percent discount rate, and $0.42 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 2 are 8.80 million metric tons of CO_2, 7.19 thousand tons of NO_X, and 0.059 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 2 ranges from $52 million to $919 million.

At TSL 2, the average LCC impact ranges from −$961 for design line 13B to $6,332 for design line 12. The median PBP ranges from 20.4 years for design line 13B to 6.2 years for design line 9. The share of customers experiencing a net LCC benefit ranges from 40.4 percent for design line 13B to 94.3 percent for design line 9.

At TSL 2, the projected change in INPV ranges from a decrease of $7 million to a decrease of $1 million. If the decrease of $7 million occurs, TSL 2 could result in a net loss of 7.1 percent in INPV to manufacturers of medium-voltage dry-type distribution transformers. At TSL 2, DOE recognizes the risk of small negative impacts if manufacturers are unable to recoup investments made to meet the standard.

After considering the analysis and weighing the benefits and the burdens, DOE has tentatively concluded that at TSL 2 for medium-voltage, dry-type distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive impacts on consumers (as indicated by positive average LCC savings for five of the six design lines, favorable PBPs, and the large percentage of customers who would experience LCC benefits), emission reductions, and the estimated monetary value of the emissions reductions would outweigh the risk of small negative impacts if manufacturers are unable to recoup investments made to meet the standard. In particular, the Secretary of Energy has concluded that TSL 2 would save a significant amount of energy and is technologically feasible and economically justified. In addition, DOE notes that TSL 2 corresponds to the standards that were agreed to by the ERAC subcommittee, as described in section II.B.2. Based on the above considerations, DOE today proposes to adopt the energy conservation standards for medium-voltage, dry-type distribution transformers at TSL 2. Table V.45 presents the proposed energy conservation standards for medium-voltage, dry-type distribution transformers.

TABLE V.45—PROPOSED ENERGY CONSERVATION STANDARDS FOR MEDIUM-VOLTAGE, DRY-TYPE DISTRIBUTION TRANSFORMERS

Electrical efficiency by kVA and equipment class											
Equipment class 5		Equipment class 6		Equipment class 7		Equipment class 8		Equipment class 9		Equipment class 10	
kVA	%	kVA	%	kVA	%	kVA	%	kVA	%	kVA	%
15	98.10	15	97.50	15	97.86	15	97.18	.....	.....	.....	.....
25	98.33	30	97.90	25	98.12	30	97.63	.....	.....	.....	.....
37.5	98.49	45	98.10	37.5	98.30	45	97.86	.....	.....	.....	.....
50	98.60	75	98.33	50	98.42	75	98.13	.....	.....	.....	.....
75	98.73	112.5	98.52	75	98.57	112.5	98.36	75	98.53	.....	.....
100	98.82	150	98.65	100	98.67	150	98.51	100	98.63	.....	.....
167	98.96	225	98.82	167	98.83	225	98.69	167	98.80	225	98.57
250	99.07	300	98.93	250	98.95	300	98.81	250	98.91	300	98.69
333	99.14	500	99.09	333	99.03	500	98.99	333	98.99	500	98.89
500	99.22	750	99.21	500	99.12	750	99.12	500	99.09	750	99.02
667	99.27	1000	99.28	667	99.18	1000	99.20	667	99.15	1000	99.11
833	99.31	1500	99.37	833	99.23	1500	99.30	833	99.20	1500	99.21
		2000	99.43	.....	.....	2000	99.36	.....	.....	2000	99.28
		2500	99.47	.....	.....	2500	99.41	.....	.....	2500	99.33

4. Summary of Benefits and Costs (Annualized) of the Proposed Standards

The benefits and costs of today's proposed standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, which is another way of representing customer NPV), and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[43] The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. customer monetary savings that occur as a result of market transactions while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2016–2045. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of CO_2 in each year. These impacts continue well beyond 2100.

Table V.46 shows the annualized values for the proposed standards for distribution transformers. The results for the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reductions, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $22.3/metric ton in 2010, the cost of the standards proposed in today's rule is $302 million per year in increased product costs, while the annualized benefits are $631 million in reduced product operating costs, $244 million in CO_2 reductions, and $7.78 million in reduced NO_X emissions. In this case, the net benefit amounts to $581 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $22.3/metric ton in 2010, the cost of the standards proposed in today's rule is $308 million per year in increased product costs, while the annualized benefits are $1,026 million in reduced operating costs, $244 million in CO_2 reductions, and $12.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $975 million per year.

TABLE V.46—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS FOR DISTRIBUTION TRANSFORMERS SOLD IN 2016–2045

	Discount rate	Monetized (million 2010$/year)		
		Primary estimate*	Low net benefits estimate*	High net benefits estimate*
Benefits				
Operating Cost Savings	7%	631	594	659
	3%	1,026	950	1,075
CO_2 Reduction at $4.9/t**	5%	58.6	58.6	58.6

[43] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2011, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table V.46. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2011 that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined would be a steady stream of payments.

TABLE V.46—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS FOR DISTRIBUTION TRANSFORMERS SOLD IN 2016–2045—Continued

	Discount rate	Monetized (million 2010$/year)		
		Primary estimate*	Low net benefits estimate*	High net benefits estimate*
CO_2 Reduction at $22.3/t**	3%	244	244	244
CO_2 Reduction at $36.5/t**	2.5%	389	389	389
CO_2 Reduction at $67.6/t**	3%	742	742	742
NO_X Reduction at $2,537/ton**	7%	7.78	7.78	7.78
	3%	12.4	12.4	12.4
Total †	7% plus CO_2 range	697 to 1380	660 to 1343	726 to 1409
	7%	883	846	911
	3% plus CO_2 range	1097 to 1780	1021 to 1704	1146 to 1829
	3%	1,283	1,207	1,331
Costs				
Incremental Product Costs	7%	302	338	285
	3%	308	351	289
Total Net Benefits				
Total †	7% plus CO_2 range	400 to 1083	327 to 1010	445 to 1128
	7%	581	507	626
	3% plus CO_2 range	789 to 1472	670 to 1353	857 to 1540
	3%	975	855	1,043

* The Primary, Low Net Benefits, and High Net Benefits Estimates utilize forecasts of energy prices from the AEO 2011 reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect no change in the Primary estimate, rising product prices in the Low Net Benefits estimate, and declining product prices in the High Net Benefits estimate.

** The CO_2 values represent global values (in 2010$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.3, and $36.5 per metric ton are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $67.6 per metric ton represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The value for NO_X (in 2010$) is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3% and 7% cases are derived using the SCC value calculated at a 3% discount rate, which is $22.3/metric ton in 2010 (in 2010$). In the rows labeled as "7% plus CO_2 range" and "3% plus NO_X range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that today's proposed standards address are as follows:

(1) There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the commercial equipment market.

(2) There is asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services).

(3) There are external benefits resulting from improved energy efficiency of distribution transformers that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases.

The specific market failure that the energy conservation standard addresses for distribution transformers is that a substantial portion of distribution transformer purchasers are not evaluating the cost of transformer losses when they make distribution transformer purchase decisions. Therefore, distribution transformers are being purchased that do not provide the minimum LCC service to equipment owners.

For distribution transformers, the Institute of Electronic and Electrical Engineers Inc. (IEEE) has documented voluntary guidelines for the economic evaluation of distribution transformer losses, IEEE PC57.12.33/D8. These guidelines document economic evaluation methods for distribution transformers that are common practice in the utility industry. But while economic evaluation of transformer losses is common, it is not a universal practice. DOE collected information during the course of the previous energy conservation standard rulemaking to estimate the extent to which distribution transformer purchases are evaluated. Data received from the National Electrical Manufacturers Association indicated that these guidelines or similar criteria are applied to approximately 75 percent of liquid-immersed transformer purchases, 50 percent of small capacity medium-voltage dry-type transformer purchases, and 80 percent of large capacity medium-voltage dry-type transformer purchases. Therefore, 25 percent, 50 percent, and 20 percent of distribution transformer purchases do not have economic evaluation of transformer losses. These are the portions of the distribution transformer market in which there is market failure. Today's proposed energy conservation standards would eliminate from the market those distribution transformers designs that are purchased on a purely minimum first cost basis, but which would not likely be purchased by equipment buyers when the economic value of equipment losses are properly evaluated.

In addition, DOE has determined that today's regulatory action is an "economically significant regulatory action" under section 3(f)(1) of Executive Order 12866. Accordingly, section 6(a)(3) of the Executive Order requires that DOE prepare a regulatory impact analysis (RIA) on today's proposed rule and that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and

Budget (OMB) review this rule. DOE presented to OIRA for review the draft rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. The assessments prepared pursuant to Executive Order 12866 can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563. 76 FR 3281 (Jan. 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's NOPR is consistent with these principles.

B. Review Under the Regulatory Flexibility Act

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

Based on the number of small distribution transformer manufacturers and the potential scope of the impact, DOE could not certify that the proposed standards would not have a significant impact on a significant number of small businesses in the distribution transformer industry. Therefore, DOE has prepared an IRFA for this rulemaking, a copy of which DOE will transmit to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C 605(b). As presented and discussed below, the IFRA describes potential impacts on small transformer manufacturers associated with capital and product conversion costs and discusses alternatives that could minimize these impacts.

A statement of the objectives of, and reasons and legal basis for, the proposed rule are set forth elsewhere in the preamble and not repeated here.

1. Description and Estimated Number of Small Entities Regulated

a. Methodology for Estimating the Number of Small Entities

For manufacturers of distribution transformers, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30850 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/content/table-small-business-size-standards*. Distribution transformer manufacturing is classified under NAICS 335311, ''Power, Distribution and Specialty Transformer Manufacturing.'' The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business for this category.

To estimate the number of companies that could be small business manufacturers of products covered by this rulemaking, DOE conducted a market survey using available public information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (including NEMA), information from previous rulemakings, UL qualification directories, individual company Web sites, and market research tools (*e.g.,* Hoover's reports) to create a list of companies that potentially manufacture distribution transformers covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at previous DOE public meetings. As necessary, DOE contacted companies on its list to determine whether they met the SBA's definition of a small business manufacturer. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated.

DOE initially identified at least 63 potential manufacturers of distribution transformers sold in the U.S. DOE reviewed publicly available information on these potential manufacturers and contacted many to determine whether they qualified as small businesses. Based on these efforts, DOE estimates there are 10 liquid immersed small business manufacturers, 14 LVDT small business manufacturers, and 17 small business manufacturers of MVDT. Some small businesses compete in more than one of these markets.

b. Manufacturer Participation

Of the LVDT manufacturers, DOE was able to reach and discuss potential standards with eight of the 14 small business manufacturers. Of the MVDT manufacturers, DOE was able to reach and discuss potential standards with five of the 17 small business manufacturers. Of the liquid-immersed small business manufacturers, DOE was able to reach and discuss potential standards with three of the 10 small business manufacturers. DOE also obtained information about small business impacts while interviewing large manufacturers.

c. Distribution Transformer Industry Structure and Nature of Competition

Liquid Immersed

Six major manufacturers supply more than 80 percent of the market for liquid-immersed transformers. None of the major manufacturers of distribution transformers covered in this rulemaking are considered to be small businesses. The vast majority of shipments are manufactured domestically. Electric utilities compose the customer base and typically buy on first-cost. Many small manufacturers position themselves towards the higher end of the market or in particular product niches, such as network transformers or harmonic mitigating transformers, but, in general, competition is based on price after a given unit's specs are prescribed by a customer.

Low-Voltage Dry-Type

Four major manufacturers supply more than 80 percent of the market for low-voltage dry-type transformers. None of the major LVDT manufacturers of distribution transformers covered in this rulemaking are small businesses. The customer base rarely purchases on efficiency and is very first-cost conscious, which, in turn, places a premium on economies of scale in manufacturing. DOE estimates approximately 80 percent of the market is served by imports, mostly from Canada and Mexico. Many of the small businesses that compete in the low-voltage dry-type market produce specialized transformers that are exempted from standards. Roughly 50 percent of the market by revenue is exempted from DOE standards. This market is much more fragmented than the one serving DOE-covered LVDT transformers.

In the DOE-covered LVDT market, low-volume manufacturers typically do not compete directly with large manufacturers using business models similar to those of their bigger rivals because scale disadvantages in purchasing and production are usually too great a barrier in this portion of the market. The exceptions to this rule are those companies that also compete in the medium-voltage market and, to some extent, are able to leverage that experience and production economies. More typically, low-volume manufacturers have focused their operations on one or two parts of the value chain—rather than all of it—and trained their sights on market segments outside of the high-volume baseline efficiency market.

In terms of operations, some small firms focus on the engineering and design of transformers and source the production of the cores or even the whole transformer, while other small firms focus on just production and rebrand for companies that offer broader solutions through their own sales and distribution networks.

In terms of market focus, many small firms simply compete entirely in the DOE-exempted markets. DOE did not attempt to contact companies operating entirely in this very fragmented market. Of those that do compete in the DOE-covered market, a few small businesses reported a focus on the high-end of the market, often selling NEMA Premium or better transformers as retrofit opportunities. Others focus on particular applications or other niches, like data centers, and become well-versed in the unique needs of a particular customer base.

Medium-Voltage Dry-Type

The medium-voltage dry-type transformer market is relatively consolidated with one large company holding a substantial share of the market. Electric utilities and industrial users make up most of the customer base and typically buy on first-cost or features other than efficiency. DOE estimates that at least 75 percent of production occurs domestically. Several manufacturers also compete in the power transformer market. Like the LVDT industry, most small business manufacturers often produce transformers exempted from DOE standards. DOE estimates 10 percent of the market is exempt from standards.

d. Comparison Between Large and Small Entities

Small distribution transformer manufacturers differ from large manufacturers in several ways that affect the extent to which they would be impacted by the proposed standards. Characteristics of small manufacturers include: lower production volumes, fewer engineering resources, less technical expertise, lack of purchasing power for high performance steels, and less access to capital.

Lower production volumes lie at the heart of most small business disadvantages, particularly for a small manufacturer that is vertically integrated. A lower-volume manufacturer's conversion costs would need to be spread over fewer units than a larger competitor. Thus, unless the small business can differentiate its product in some way that earns a price premium, the small business is a 'price taker' and experiences a reduction in profit per unit relative to the large manufacturer. Therefore, because much of the same equipment would need to be purchased by both large and small manufacturers in order to produce transformers (in-house) at higher TSLs, undifferentiated small manufacturers would face a greater variable cost penalty because they must depreciate the one-time conversion expenditures over fewer units.

Smaller companies are also more likely to have more limited engineering resources and they often operate with lower levels of design and manufacturing sophistication. Smaller companies typically also have less experience and expertise in working with more advanced technologies, such as amorphous core construction in the liquid immersed market or step-lap mitering in the dry-type markets. Standards that required these technologies could strain the engineering resources of these small manufacturers if they chose to maintain a vertically integrated business model.

Small distribution transformer manufacturers can also be at a disadvantage due to their lack of purchasing power for high performance materials. If more expensive steels are needed to meet standards and steel cost grows as a percentage of the overall product cost, small manufacturers who pay higher per pound prices would be disproportionately impacted.

Lastly, small manufacturers typically have less access to capital, which may be needed by some to cover the conversion costs associated with new technologies.

2. Description and Estimate of Compliance Requirements

Liquid Immersed. Based on interviews with manufacturers in the liquid-immersed market, DOE does not believe small manufacturers will face significant capital conversion costs at the levels proposed in today's rulemaking. DOE expects small manufacturers of liquid-immersed distribution transformers to continue to produce silicon steel cores, rather than invest in amorphous technology. While silicon steel designs capable of achieving TSL 1 would get larger, and thus reduce throughput, most manufacturers said the industry in general has substantial excess capacity due to the recent economic downturn. Therefore, DOE believes TSL 1 would not require the typical small manufacturer to invest in additional capital equipment. However, small manufacturers may incur some engineering and product design costs associated with re-optimizing their production processes around new baseline products. DOE estimates TSL 1

would require industry production development costs of only one-half of one year's annual industry R&D expenses, as the levels do not require any changes in technology or steel types. Because these costs are relatively fixed per manufacturer, these one-time costs impact smaller manufacturers disproportionately compared to larger manufacturers. The table below illustrates this effect by comparing the conversion costs to a typical small company's and a typical large manufacturer's annual R&D expenses.

TABLE VI.1—ESTIMATED PRODUCT CONVERSION COSTS AS A PERCENTAGE OF ANNUAL R&D EXPENSE

	Product conversion cost	Product conversion cost as a percentage of annual R&D expense
Typical Large Manufacturer	$1.4 M	20
Typical Small Manufacturer	$1.4 M	222

While the costs disproportionately impact small manufactures, the standard levels, as stated above, do not require small manufacturers to invest in entirely different production processes nor do they require steels or core construction techniques with which these manufacturers are not familiar. A range of design options would still be available.

Low-Voltage Dry-Type. For the low-voltage dry-type market, at TSL 1, the level proposed in today's notice, DOE estimates, capital conversion costs of $0.75 million and product conversion costs of $0.2 million for a typical small and large manufacturer, based on manufacturer interviews. Because of the largely fixed nature of these one-time conversion expenditures that distribution transformer manufacturers would incur as a result of standards, small manufacturers who choose to invest to maintain in-house production will likely be disproportionately impacted compared to large manufacturers. As Table VI.2 indicates, small manufacturers face a greater relative hurdle in complying with standards should they opt to continue to maintain core production in-house.

TABLE VI.2—ESTIMATED CAPITAL AND PRODUCT CONVERSION COSTS AS A PERCENTAGE OF ANNUAL CAPITAL EXPENDITURES AND R&D EXPENSE

	Capital conversion cost as a percentage of annual capital expenditures	Product conversion cost as a percentage of annual R&D expense	Total conversion cost as a percentage of annual EBIT
Large Manufacturer	40	11	17
Small Manufacturer	152	49	77

As demonstrated in the table above, the investments required to meet TSL 1, disproportionately impact small businesses. However, DOE's capital conversion costs estimates in the table above assume that small businesses are currently producing their cores in-house and will choose to do so in the future, rather than source them from third-party core manufactures who often have significant cost advantages through bulk steel purchasing power and greater production efficiencies due to higher volumes. As such, many small businesses DOE interviewed already source a large percentage of their cores and many indicated they expected such a strategy would be the low-cost option under higher standards.

Compared to higher TSLs, TSL 1 provides many more design paths for small manufacturers to comply. DOE's engineering analysis indicates manufacturers can continue to use the low-capital butt-lap core designs, meaning investment in mitering capability is not necessary to comply. Manufacturers can use higher-quality grain oriented steels in butt-lap designs to meet these proposed efficiency levels, source some or all cores, or invest in mitering capability. DOE notes that roughly half of the small business LVDT manufacturers DOE interviewed already have mitering capability. For all of the reasons discussed, DOE believes the capital expenditures it assumed for small businesses are likely conservative and that small businesses have a variety of technical and strategic paths to continue to compete in the market at TSL 1.

Medium-Voltage Dry-Type. Based on its engineering analysis and interviews, DOE expects relatively minor capital expenditures for the industry to meet TSL 2. DOE understands that the market is already standardized on step-lap mitering, so manufacturers will not need to make major investments for more advanced core construction. Furthermore, TSL 2 does not require a change to much thinner steels such as M3 or HO. The industry can use M4 and H1, thicker steels with which it has much more experience and which are easier to employ in the stacked-core production process that dominates the medium-voltage market. However, some investment will be required to maintain capacity as some manufacturers will likely migrate to more M4 and H1 steel from the slightly thicker M5, which is also common. Additionally, design options at TSL 2 typically have larger cores, also slowing throughput. Therefore, some manufacturers may need to invest in additional production equipment. Alternatively, depending on each company's availability capacity, manufacturers could employ addition production shifts, rather than invest in additional capacity.

For the medium-voltage dry-type market, at TSL 2, the level proposed in today's notice, DOE estimates capital conversion costs of $1.0 million and product conversion costs of $0.2 million for a typical small and large manufacturer that would need to expand mitering capacity to meet TSL 2. Table VI.3 illustrates the relative impacts on small and large manufacturers.

TABLE VI.3—ESTIMATED CAPITAL AND PRODUCT CONVERSION COSTS AS A PERCENTAGE OF ANNUAL CAPITAL EXPENDITURES AND R&D EXPENSE

	Capital conversion cost as a percentage of annual capital expenditures	Product conversion cost as a percentage of annual R&D expense	Total conversion cost as a percentage of annual EBIT
Large Manufacturer	43	7	14
Small Manufacturer	327	65	124

a. Summary of Compliance Impacts

The compliance impacts on small businesses are discussed above for low-voltage dry-type, medium-voltage dry-type, and liquid-filled distribution transformer manufacturers. Although the conversion costs required can be considered substantial for all companies, the impacts could be relatively greater for a typical small manufacturer because of much lower production volumes and the relatively fixed nature of the R&D and capital investments required.

DOE seeks comment on the potential impacts of amended standards on small distribution transformer manufacturers.

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

4. Significant Alternatives to the Proposed Rule

The discussion above analyzes impacts on small businesses that would result from the other TSLs DOE considered. Though TSLs lower than the proposed TSLs are expected to reduce the impacts on small entities, DOE is required by EPCA to establish standards that achieve the maximum improvement in energy efficiency that are technically feasible and economically justified, and result in a significant conservation of energy. Therefore, DOE rejected the lower TSLs.

In addition to the other TSLs being considered, the NOPR TSD includes a regulatory impact analysis in chapter 17. For distribution transformers, this report discusses the following policy alternatives: (1) Consumer rebates, (2) consumer tax credits, and (3) manufacturer tax credits. DOE does not intend to consider these alternatives further because they either are not feasible to implement or are not expected to result in energy savings as large as those that would be achieved by the standard levels under consideration.

DOE continues to seek input from businesses that would be affected by this rulemaking and will consider comments received in the development of any final rule.

5. Significant Issues Raised by Public Comments

DOE's MIA suggests that, while TSL1, TSL1, and TSL 2 presents greater difficulties for small businesses than lower levels in the liquid-immersed, LVDT, and MVDT superclasses, respectively, the impacts at higher TSLs would be greater. DOE expects that small businesses will generally be able to profitably compete at the TSL proposed in today's rulemaking. DOE's MIA is based on its interviews of both small and large manufacturers, and consideration of small business impacts explicitly enters into DOE's choice of the TSLs proposed in this NOPR.

DOE also notes that today's proposed standards can be met with a variety of materials, including multiple core steels and both copper and aluminum windings. Because the proposed TSLs can be met with a variety of materials, DOE does not expect that material availability issues will be a problem for the industry that results from this rulemaking.

ACEEE submitted a comment stating that small, medium-voltage dry-type manufacturers would not be forced out of business at higher standard levels because they could either install the necessary mitering equipment or purchase finished cores. (ACEEE, No. 127 at p. 9) DOE recognizes both of these possibilities. While DOE agrees that standard levels higher than TSL2 would not necessarily drivel small businesses from the market, there is much more uncertainty about whether traditional M-grade steels can be used at higher TSLs, which could disproportionately jeopardize many small manufacturers who have limited access to domain refined steels.

6. Steps DOE Has Taken to Minimize the Economic Impact on Small Manufacturers

In consideration of the benefits and burdens of standards, including the burdens posed to small manufacturers, DOE concluded TSL1 is the highest level that can be justified for liquid immersed and low-voltage dry-type transformers and TSL2 is the highest level that can be justified for medium-voltage, dry-type transformers. As explained in part 6 of the IRFA, ''Significant Alternatives to the Rule,'' DOE explicitly considered the impacts on small manufacturers of liquid immersed and dry-type transformers in selecting the TSLs proposed in today's rulemaking, rather than selecting a higher trial standard level. It is DOE's belief that levels at TSL3 or higher would place excessive burdens on small manufacturers of medium-voltage, dry-type transformers, as would TSL 2 or higher for liquid immersed and low-voltage dry-type transformers. Such burdens would include large product redesign costs and also operational problems associated with the extremely thin laminations of core steel that would be needed to meet these levels and advanced core construction equipment and tooling. For low-voltage dry-type specifically, TSL2 essentially eliminates butt-lap core designs and will therefore put more burden on small manufacturers than would TSL1. However, the differential impact on small businesses (versus large businesses) is expected to be lower in moving to TSL1 than in moving from TSL2 to TSL3 because of the likely need to employ step lap mitering or wound core designs. Similarly, for medium voltage dry-type, the steels and construction techniques likely to be used at TSL 2 are already commonplace in the market, whereas TSL 3 would likely trigger a more dramatic shift to thinner and more exotic steels, to which many small businesses have limited access. Lastly, DOE is confident that TSL1 for the liquid immersed market would not require small manufacturers to invest in amorphous technology, which could put them at a significant disadvantage.

Section VI.B above discusses how small business impacts entered into DOE's selection of today's proposed standards for distribution transformers. DOE made its decision regarding standards by beginning with the highest level considered and successively eliminating TSLs until it found a TSL

that is both technologically feasible and economically justified, taking into account other EPCA criteria. Because DOE believes that the TSLs proposed are economically justified (including consideration of small business impacts), the reduced impact on small businesses that would have been realized in moving down to lower efficiency levels was not considered in DOE's decision (but the reduced impact on small businesses that is realized in moving down to TSL2 from TSL3 (in the case of medium-voltage dry-type) and TSL2 to TSL1 (in the case of liquid immersed and low-voltage dry-type) was explicitly considered in the weighing of benefits and burdens).

C. Review Under the Paperwork Reduction Act

Manufacturers of distribution transformers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for distribution transformers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including distribution transformers. (76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is 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.

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

Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. (See 10 CFR 1021.410(b) and Appendix B to Subpart D) The proposed rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov*.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal 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. 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. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

Although today's proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more on the private

sector. Specifically, the proposed rule will likely result in a final rule that could require expenditures of $100 million or more. Such expenditures may include: (1) Investment in R&D and in capital expenditures by distribution transformer manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency distribution transformers, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this NOPR and the ''Regulatory Impact Analysis'' chapter of the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. 2 U.S.C. 1535(a). DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(d), (f), and (o), 6313(e), and 6316(a), today's proposed rule would establish energy conservation standards for distribution transformers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for today's proposed rule.

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 that under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's NOPR 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 OIRA at 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 promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that today's regulatory action, which sets forth proposed energy conservation standards for distribution transformers, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions. 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html*.

VII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. 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. Please also note that anyone that wishes to bring a laptop computer into the Forrestal Building will be required to obtain a property pass. Otherwise, visitors should avoid bringing laptops, or allow an extra 45 minutes.

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 at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/distribution_transformers.html*. Participants are responsible for ensuring their systems are compatible with the webinar software.

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. The regulations.gov web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section B for further information on how to submit comments through *www.regulations.gov*.

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 follow-up contact, if needed.

C. Conduct of the 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 allow, 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, data, and other information 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 itself 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 below.

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/courier, 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 in 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. If you submit via mail or hand delivery/courier, 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, that are written in English, and that 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/courier 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. DOE requests comment on primary and secondary winding configurations, on how testing should be required, on efficiency differences related to different winding configurations, and on how frequently transformers are operated in various winding configurations.

2. DOE requests comment on its proposal to require transformers with multiple nameplate kVA ratings to comply only at those ratings corresponding to passive cooling.

3. DOE requests comment on its proposal to maintain the requirement that transformers comply with standards for the BIL rating of the configuration that produces the highest losses.

4. DOE requests comment on its proposal to maintain the current test loading value requirements for all types of distribution transformers.

5. DOE requests comment on its proposal to require rectifier and testing transformers to indicate on their nameplates that they are for such purposes exclusively.

6. DOE requests comment on its proposal to maintain the definition of mining transformer but also requests information useful in precisely expanding the definition to encompass any activity that entails the removal of material underground, such as digging or tunneling.

7. DOE requests comment on its proposal to maintain the current kVA scope of coverage.

8. DOE requests comment on its proposal to continue not to set standards for step-up transformers.

9. DOE requests comment on the negotiating committee's proposal to establish a separate equipment class for network/vault transformers and on how such transformers might be defined.

10. DOE requests comment on the negotiating committee's proposal to establish a separate equipment class for data center transformers and on how such transformers might be defined.

11. DOE seeks comment on the operating characteristics for data center transformers. Specifically DOE seeks comment on appropriate load factors, and peak responsibility factors of data center transformers.

12. DOE requests comment on whether separate equipment classes are warranted for pole-mounted, pad-mounted, or other types of liquid-immersed transformers.

13. DOE requests comment on setting standards by BIL rating for liquid-immersed distribution transformers as it currently does for medium-voltage, dry-type units.

14. DOE requests comment on how best to scale across phase counts for each transformer type and how standards for either single- or three-phase transformers may be derived from the other type.

15. DOE requests comment on its proposal to scale standards to unanalyzed kVA ratings by fitting a straight line in logarithmic space to selected efficiency levels (ELs) with the understanding that the resulting line may not have a slope equal to 0.75.

16. DOE seeks comment on symmetric core designs.

17. DOE seeks comment on nanotechnology composites and their potential for use in distribution transformers.

18. DOE requests comment on its materials prices for both 2010 and 2011 cases.

19. DOE requests comment on the current and future availabilities of high-grade steels, particularly amorphous and mechanically-scribed steel in the United States.

20. DOE requests comment on particular applications in which transformer size and weight are likely to be a constraint and any data that may be used to characterize the problem.

21. DOE requests comment on its steel supply availability analysis, presented in appendix 3A of the TSD.

22. DOE seeks comment on its proposed additional distribution channel for liquid-immersed transformers that estimates that approximately 80 percent of transformers are sold by manufacturers directly to utilities.

23. DOE seeks comment on any additional sources of distribution transformer load data that could be used to validate the Energy Use and End-Use Load Characterization analysis. DOE is specifically interested in additional load data for higher capacity three phase distribution transformers.

24. DOE seeks comment on its pole replacement methodology that is used estimate increased installation costs resulting from increased transformer weight due the proposed standard. The pole replacement methodology is presented in chapter 6, section 6.3.1 of the TSD.

25. DOE seeks comment on recent changes to utility distribution transformer purchase practices that would lead to the purchase of a

refurbished, specifically re-wound, distribution transformer over the purchase of new distribution transformer.

26. DOE seeks comment on the equipment lifetimes of refurbished, specifically re-wound distribution transformers and how it compares to that of a new distribution transformer.

27. DOE seeks comment on recent changes in distribution transformer sizing practices. In particular, DOE would like comments on any additional sources of data regarding trends in market share across equipment classes for either liquid-immersed or dry-type transformers that should be considered in the analysis.

28. DOE requests comment on the possibility of reduced equipment utility or performance resulting from today's proposed standards, particularly the risk of reducing the ability to perform periodic maintenance and the risk of increasing vibration and acoustic noise.

29. DOE requests comment and corroborating data on how often distribution transformers are operated with their primary and secondary windings in different configurations, and on the magnitude of the additional losses in less efficient configurations.

30. DOE requests comment on impedance values and on any related parameters (*e.g.,* inrush current, X/R ratio) that may be used in evaluation of distribution transformers. DOE requests particular comment on how any of those parameters may be affected by energy conservation standards of today's proposed levels or higher.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on January 31, 2012.

Henry Kelly,

Acting Assistant Secretary of Energy, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 431 of chapter II, of title 10 of the Code of Federal Regulations, to read as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Revise § 431.196 to read as follows:

§ 431.196 Energy conservation standards and their effective dates.

(a) Low-Voltage Dry-Type Distribution Transformers. (1) The efficiency of a low-voltage dry-type distribution transformer manufactured on or after January 1, 2007, but before January 1, 2016, shall be no less than that required for their kVA rating in the table below. Low-voltage dry-type distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-phase		Three-phase	
kVA	%	kVA	%
15	97.7	15	97.0
25	98.0	30	97.5
37.5	98.2	45	97.7
50	98.3	75	98.0
75	98.5	112.5	98.2
100	98.6	150	98.3
167	98.7	225	98.5
250	98.8	300	98.6
333	98.9	500	98.7
		750	98.8
		1000	98.9

Note: All efficiency values are at 35 percent of nameplate-rated load, determined according to the DOE Test-Procedure. 10 CFR part 431, Subpart K, Appendix A.

(2) The efficiency of a low-voltage dry-type distribution transformer manufactured on or after January 1, 2016, shall be no less than that required for their kVA rating in the table below. Low-voltage dry-type distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-phase		Three-phase	
kVA	%	kVA	%
15	97.73	15	97.44
25	98.00	30	97.95
37.5	98.20	45	98.20
50	98.31	75	98.47
75	98.50	112.5	98.66
100	98.60	150	98.78
167	98.75	225	98.92
250	98.87	300	99.02
333	98.94	500	99.17
		750	99.27

Single-phase		Three-phase	
kVA	%	kVA	%
		1000	99.34

Note: All efficiency values are at 35 percent of nameplate-rated load, determined according to the DOE Test-Procedure. 10 CFR part 431, Subpart K, Appendix A.

(b) Liquid-Immersed Distribution Transformers. (1) The efficiency of a liquid-immersed distribution transformer manufactured on or after January 1, 2010, but before January 1, 2016, shall be no less than that required for their kVA rating in the table below. Liquid-immersed distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-phase		Three-phase	
kVA	%	kVA	%
10	98.70	15	98.65
15	98.82	30	98.83
25	98.95	45	98.92
37.5	99.05	75	99.03
50	99.11	112.5	99.11
75	99.19	150	99.16
100	99.25	225	99.23
167	99.33	300	99.27
250	99.39	500	99.35
333	99.43	750	99.40
500	99.49	1000	99.43
		1500	99.48

Note: All efficiency values are at 50 percent of nameplate-rated load, determined according to the DOE Test-Procedure. 10 CFR part 431, Subpart K, Appendix A.

(2) The efficiency of a liquid-immersed distribution transformer manufactured on or after January 1, 2016, shall be no less than that required for their kVA rating in the table below. Liquid-immersed distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-phase		Three-phase	
kVA	Efficiency (%)	kVA	Efficiency (%)
10	98.62	15	98.36
15	98.76	30	98.62
25	98.91	45	98.76
37.5	99.01	75	98.91
50	99.08	112.5	99.01
75	99.17	150	99.08
100	99.23	225	99.17
167	99.25	300	99.23
250	99.32	500	99.25
333	99.36	750	99.32
500	99.42	1000	99.36
667	99.46	1500	99.42
833	99.49	2000	99.46
		2500	99.49

Note: All efficiency values are at 50 percent of nameplate-rated load, determined according to the DOE Test-Procedure. 10 CFR part 431, Subpart K, Appendix A.

(c) Medium-Voltage Dry-Type Distribution Transformers. (1) The efficiency of a medium- voltage dry-type distribution transformer manufactured on or after January 1, 2010, but before January 1, 2016, shall be no less than that required for their kVA and BIL rating in the table below. Medium-voltage dry-type distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-Phase				Three-Phase			
BIL*	20–45 kV	46–95 kV	≥96 kV	BIL*	20–45 kV	46–95 kV	≥96 kV
kVA	Efficiency (%)	Efficiency (%)	Efficiency (%)	kVA	Efficiency (%)	Efficiency (%)	Efficiency (%)
15	98.10	97.86	.....	15	97.50	97.18	.....
25	98.33	98.12	.....	30	97.90	97.63	.....
37.5	98.49	98.30	.....	45	98.10	97.86	.....
50	98.60	98.42	.....	75	98.33	98.13	.....
75	98.73	98.57	98.53	112.5	98.52	98.36	.....
100	98.82	98.67	98.63	150	98.65	98.51	.....
167	98.96	98.83	98.80	225	98.82	98.69	98.57
250	99.07	98.95	98.91	300	98.93	98.81	98.69
333	99.14	99.03	98.99	500	99.09	98.99	98.89
500	99.22	99.12	99.09	750	99.21	99.12	99.02
667	99.27	99.18	99.15	1000	99.28	99.20	99.11
833	99.31	99.23	99.20	1500	99.37	99.30	99.21
.....	.....	.....	.....	2000	99.43	99.36	99.28
.....	.....	.....	.....	2500	99.47	99.41	99.33

* BIL means basic impulse insulation level.

Note: All efficiency values are at 50 percent of nameplate rated load, determined according to the DOE Test-Procedure. 10 CFR part 431, Subpart K, Appendix A.

(2) The efficiency of a medium-voltage dry-type distribution transformer manufactured on or after January 1, 2016, shall be no less than that required for their kVA and BIL rating in the table below. Medium-voltage dry-type distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-Phase				Three-Phase			
BIL*	20–45 kV	46–95 kV	≥96 kV	BIL*	20–45 kV	46–95 kV	≥96 kV
kVA	Efficiency (%)	Efficiency (%)	Efficiency (%)	kVA	Efficiency (%)	Efficiency (%)	Efficiency (%)
15	98.10	97.86	.....	15	97.50	97.18	.....
25	98.33	98.12	.....	30	97.90	97.63	.....
37.5	98.49	98.30	.....	45	98.10	97.86	.....
50	98.60	98.42	.....	75	98.33	98.12	.....
75	98.73	98.57	98.53	112.5	98.49	98.30	.....
100	98.82	98.67	98.63	150	98.60	98.42	.....
167	98.96	98.83	98.80	225	98.73	98.57	98.53
250	99.07	98.95	98.91	300	98.82	98.67	98.63
333	99.14	99.03	98.99	500	98.96	98.83	98.80
500	99.22	99.12	99.09	750	99.07	98.95	98.91
667	99.27	99.18	99.15	1000	99.14	99.03	98.99
833	99.31	99.23	99.20	1500	99.22	99.12	99.09
.....	.....	.....	.....	2000	99.27	99.18	99.15
.....	.....	.....	.....	2500	99.31	99.23	99.20

* BIL means basic impulse insulation level.

Note: All efficiency values are at 50 percent of nameplate rated load, determined according to the DOE Test-Procedure. 10 CFR part 431, Subpart K, Appendix A.

(d) Underground Mining Distribution Transformers. [Reserved]

[FR Doc. 2012–2642 Filed 2–9–12; 8:45 am]

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Part IV

Department of Housing and Urban Development

Announcement of Funding Awards for the Continuum of Care Program for Fiscal Year (FY) 2010; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–17]

Announcement of Funding Awards for the Continuum of Care Program for Fiscal Year (FY) 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 past funding decisions made by the Department in a competition for funding under the FY2010 Notice of Funding Availability (NOFA) for the Homeless Assistance Grants program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD in 2010. A **Federal Register** notice on this action was not published at the time; however, the public was advised of these grant selections since they were posted on HUD's Web site. The posting contained a listing of the selected applicants, including descriptions of the projects.

FOR FURTHER INFORMATION CONTACT: Ann M. Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410–7000; telephone (202) 708–4300 (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 (800) 877–8339. For general information on this and other HUD programs, call Community Connections at (800) 998–9999 or visit the HUD Web site at *http://www.hud.gov* or *http://www.hudhre.info*.

SUPPLEMENTARY INFORMATION: HUD's Homeless Assistance Grants provide Federal support to one of the nation's most vulnerable populations while working to reduce overall homelessness and end chronic homelessness. Competitive Homeless Assistance Grants include the Supportive Housing Program, Shelter Plus Care, and the Section 8 Moderate Rehabilitation Single Room Occupancy Program, which are distributed through a competitive process called the Continuum of Care (CoC) in which Federal funding is driven by the local decisionmaking. The CoC system is a community-based process that provides a coordinated housing and service delivery system that enables communities to plan for and provide a comprehensive response to homeless individuals and families. It is an inclusive process that is coordinated with nonprofit organizations, state and local government agencies, service providers, private foundations, faith-based organizations, law enforcement, local businesses, and homeless or formerly homeless persons.

The FY2010 awards announced in this Notice were selected for funding in the competition announced in the **Federal Register** on September 14, 2010, (FR–5415–N–17) and posted at *http://archives.hud.gov/funding/2010/grpcoc.cfm*. Applications were scored and selected for funding based on the selection criteria in the General Section and the CoC program section.

HUD awarded a total of 7,433 competitive Homeless Assistance Grants HUD grants totaling $1,628,387,474 for FY2010. Subsequent to HUD's announcement of the FY2010 awards on January 19, 2011, HUD awarded one additional renewal grant in North Dakota which has been included in the funding awards. The additional award was made based on the further review by HUD of specific circumstances surrounding its renewal request.

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 details of these funding grant announcements in Appendix A.

Dated: February 3, 2012.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

Appendix A

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY

Recipient	State	Amount
Alaska Housing Finance Corporation	AK	$298,560
Alaska Housing Finance Corporation	AK	214,392
Alaska Housing Finance Corporation	AK	11,542
Alaska Housing Finance Corporation	AK	98,208
Alaska Housing Finance Corporation	AK	55,584
Alaska Housing Finance Corporation	AK	120,864
Alaska Housing Finance Corporation	AK	98,472
Alaska Housing Finance Corporation	AK	104,496
Alaska Housing Finance Corporation	AK	18,460
Alaskan AIDS Assistance Association	AK	104,665
Anchorage Community Mental Health Services, Inc	AK	203,464
Anchorage Community Mental Health Services, Inc	AK	646,563
Anchorage Housing Initiatives, Inc	AK	84,578
Covenant House Alaska	AK	245,629
Interior Alaska Center for Non-Violent Living	AK	32,824
Interior Alaska Center for Non-Violent Living	AK	48,090
Interior Alaska Center for Non-Violent Living	AK	50,965
Municipality of Anchorage	AK	296,714
Rural Alaska Community Action Program, Inc	AK	502,241
St. Vincent de Paul Society Diocesan Council Southeast Alask	AK	26,350
The LeeShore Center	AK	73,791
Tundra Women's Coalition	AK	28,212
Valley Residential Services, Inc	AK	102,499
Valley Residential Services, Inc	AK	13,170
AIDS Alabama Inc	AL	149,300
AIDS Alabama Inc	AL	245,600
AIDS Alabama Inc	AL	186,873
AIDS Alabama Inc	AL	262,903

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Alabama Coalition Against Domestic Violence	AL	128,638
Aletheia House	AL	314,705
Aletheia House	AL	108,857
City of Gadsden	AL	29,297
City of Tuscaloosa	AL	28,000
Faith Crusade Ministries, Inc	AL	63,626
Faith Crusade Ministries, Inc	AL	59,902
First Light, Inc	AL	86,068
First Light, Inc	AL	82,368
First Light, Inc	AL	245,600
First Stop, Inc	AL	81,009
House of Restoration	AL	319,329
Housing First, Inc	AL	105,000
Housing First, Inc	AL	146,187
Housing First, Inc	AL	94,756
Housing First, Inc	AL	244,386
Housing First, Inc	AL	123,060
Housing First, Inc	AL	120,860
Housing First, Inc	AL	479,261
Housing First, Inc	AL	135,881
Housing First, Inc	AL	103,751
Housing First, Inc	AL	25,261
Housing First, Inc	AL	175,061
Housing First, Inc	AL	148,732
Housing First, Inc	AL	235,521
Housing First, Inc	AL	163,077
Housing First, Inc	AL	86,100
Housing First, Inc	AL	160,019
Housing First, Inc	AL	123,088
Housing First, Inc	AL	78,178
Housing First, Inc	AL	90,284
Housing First, Inc	AL	384,573
Huntsville Housing Authority	AL	307,008
Independent Living Resources of Greater Birmingham, Inc	AL	26,460
Jefferson County Housing Authority	AL	264,804
Jefferson County Housing Authority	AL	3,886,032
Jefferson-Blount-St. Clair Mental Health/Mental Retardation	AL	238,439
Lighthouse Counseling Center, Inc	AL	181,414
Lighthouse Counseling Center, Inc	AL	197,854
Lighthouse Counseling Center, Inc	AL	293,602
Mental Health Center of North Central Alabama, Inc	AL	131,593
Metropolitan Birmingham Services for the Homeless	AL	138,600
Montgomery Area Family Violence Program Inc	AL	138,606
Montgomery Area Family Violence Program Inc	AL	164,652
Montgomery Area Mental Health Authority	AL	212,695
Montgomery Area Mental Health Authority	AL	64,147
Montgomery Area Mental Health Authority	AL	493,838
Montgomery Area Mental Health Authority	AL	134,678
North Alabama Coalition for the Homeless, Inc	AL	56,393
Pathways Inc	AL	128,181
Pathways Inc	AL	168,453
Safeplace, Inc	AL	520,531
State of Alabama	AL	243,708
The Cooperative Downtown Ministries, Inc	AL	146,917
The Cooperative Downtown Ministries, Inc	AL	47,835
The Cooperative Downtown Ministries, Inc	AL	126,426
The Cooperative Downtown Ministries, Inc	AL	219,089
The SafeHouse of Shelby County, Inc	AL	54,752
The Salvation Army, A Georgia Corporation	AL	69,087
The Salvation Army, a Georgia Corporation	AL	159,973
The Tuscaloosa Housing Authority	AL	200,520
The Tuscaloosa Housing Authority	AL	60,156
The Volunteer & Information Center, Inc	AL	70,327
University of Alabama at Birmingham	AL	250,510
University of Alabama at Birmingham	AL	246,975
University of Alabama at Birmingham	AL	245,540
YWCA BIRMINGHAM	AL	83,867
YWCA BIRMINGHAM	AL	369,415
Arkansas Department of Human Services	AR	411,996
Arkansas Department of Human Services	AR	408,492
Arkansas Department of Human Services	AR	967,332
Arkansas Department of Human Services	AR	28,092

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Bethlehem House, Inc	AR	200,000
Bethlehem House, Inc	AR	21,600
Better Community Development, Inc..	AR	110,125
Better Community Development, Inc..	AR	137,758
Better Community Development, Inc..	AR	40,306
City of Pine Bluff	AR	237,426
City of West Memphis, Arkansas	AR	33,648
Committee Against Spouse Abuse	AR	31,307
Health Resources of Arkansas	AR	170,224
Health Resources of Arkansas	AR	133,596
Housing Authority of the City of Fayetteville, Arkansas	AR	96,912
Housing Authority of the City of Fayetteville, Arkansas	AR	43,104
In God's Hands Transitional Living Home, Inc	AR	225,955
Little Rock Community Mental Health Center	AR	45,896
Little Rock Community Mental Health Center	AR	287,729
Little Rock Community Mental Health Center	AR	36,311
Little Rock Community Mental Health Center	AR	562,993
Little Rock Community Mental Health Center	AR	96,088
Little Rock Community Mental Health Center	AR	99,210
Little Rock Housing Authority	AR	40,800
Our House, Inc	AR	36,370
Our House, Inc	AR	162,568
River City Ministry of North Little Rock	AR	68,331
Seven Hills Homeless Center	AR	349,495
Seven Hills Homeless Center	AR	68,310
Seven Hills Homeless Center	AR	20,412
Women & Children First: The Center Against Family Violence	AR	93,058
Youth Bridge, Inc	AR	93,485
A New Leaf, Inc	AZ	510,688
A New Leaf, Inc	AZ	58,878
Area Agency on Aging, Region One	AZ	60,735
Area Agency on Aging, Region One	AZ	126,575
Area Agency on Aging, Region One	AZ	63,064
Arizona Behavioral Health Corporation	AZ	693,793
Arizona Behavioral Health Corporation	AZ	687,027
Arizona Behavioral Health Corporation	AZ	373,993
Arizona Behavioral Health Corporation	AZ	903,424
Arizona Behavioral Health Corporation	AZ	1,801,534
Arizona Behavioral Health Corporation	AZ	202,030
Arizona Behavioral Health Corporation	AZ	1,114,795
Arizona Behavioral Health Corporation	AZ	938,788
Arizona Behavioral Health Corporation	AZ	20,775
Arizona Behavioral Health Corporation	AZ	519,019
Arizona Behavioral Health Corporation	AZ	685,755
Arizona Behavioral Health Corporation	AZ	70,456
Arizona Department of Housing	AZ	125,647
Arizona Department of Housing	AZ	195,943
Arizona Department of Housing	AZ	30,332
Arizona Department of Housing	AZ	3,064,080
Arizona Department of Housing	AZ	347,504
Arizona Department of Housing	AZ	235,320
Arizona Department of Housing	AZ	93,186
Arizona Department of Housing	AZ	34,187
Arizona Department of Housing	AZ	78,175
Arizona Department of Housing	AZ	913,068
Arizona Department of Housing	AZ	129,747
Arizona Department of Housing	AZ	157,500
Arizona Department of Housing	AZ	68,358
Arizona Department of Housing	AZ	80,660
Arizona Department of Housing	AZ	78,422
Arizona Department of Housing	AZ	34,604
Arizona Department of Housing	AZ	108,701
Arizona Department of Housing	AZ	51,640
Arizona Department of Housing	AZ	131,686
Arizona Department of Housing	AZ	102,534
Arizona Department of Housing	AZ	164,877
Arizona Department of Housing	AZ	91,236
Arizona Department of Housing	AZ	222,084
Arizona Department of Housing	AZ	259,404
Arizona Department of Housing	AZ	76,685
Arizona Department of Housing	AZ	48,937
Arizona Department of Housing	AZ	1,573,692

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Arizona Department of Housing	AZ	99,805
Arizona Department of Housing	AZ	1,985,232
Arizona Department of Housing	AZ	130,600
Arizona Department of Housing	AZ	129,225
Arizona Department of Housing	AZ	187,656
Arizona Housing, Inc	AZ	78,663
Arizona Housing, Inc	AZ	58,025
Catholic Charities Community Services	AZ	24,039
Chicanos Por La Causa, Inc	AZ	101,737
Chrysalis Shelter for Victims of Domestic Violence, Inc	AZ	24,269
City of Mesa Housing Authority	AZ	418,740
City of Tucson	AZ	741,272
City of Tucson	AZ	60,385
City of Tucson	AZ	322,572
City of Tucson	AZ	330,084
City of Tucson	AZ	830,916
City of Tucson	AZ	91,037
CODAC Behavioral Health Services	AZ	453,826
CODAC Behavioral Health Services	AZ	171,443
CODAC Behavioral Health Services	AZ	221,118
Community Bridges, Inc	AZ	344,610
Community Information & Referral	AZ	400,921
Community Information & Referral	AZ	176,752
Compass Healthcare, Inc	AZ	156,274
COPE Community Services, Inc	AZ	222,646
Homeward Bound	AZ	26,250
Homeward Bound	AZ	313,761
Human Services Campus, LLC	AZ	639,424
La Frontera Center, Inc	AZ	425,148
Labor's Community Service Agency	AZ	279,594
Native American Connections, Inc	AZ	333,370
Native American Connections, Inc	AZ	163,178
Native American Connections, Inc	AZ	35,000
Native American Connections, Inc	AZ	91,043
New Arizona Family, Inc	AZ	99,105
Old Pueblo Community Foundation	AZ	221,516
Old Pueblo Community Foundation	AZ	68,391
Our Family Services, Inc	AZ	60,789
Phoenix Shanti Group	AZ	34,599
Pima County	AZ	221,935
Pima County	AZ	428,470
Pima County	AZ	387,476
Pima County	AZ	461,425
Pima County CDNC	AZ	181,089
Pima County CDNC	AZ	434,713
Recovery Innovations of Arizona, Inc	AZ	990,010
Save the Family Foundation of Arizona	AZ	420,100
Save the Family Foundation of Arizona	AZ	215,406
Sojourner Center	AZ	417,763
Southern Arizona AIDS Foundation	AZ	86,499
Southern Arizona AIDS Foundation	AZ	28,373
Southern Arizona AIDS Foundation	AZ	87,783
Southwest Behavioral Health Services, Inc	AZ	205,977
The EXCEL group, Inc	AZ	133,487
The Primavera Foundation, Inc	AZ	103,306
The Primavera Foundation, Inc	AZ	112,486
The Salvation Army Western Territory	AZ	45,360
The Salvation Army Western Territory	AZ	73,080
Tumbleweed Center for Youth Development	AZ	318,729
Tumbleweed Center for Youth Development	AZ	439,700
Tumbleweed Center for Youth Development	AZ	214,429
UMOM New Day Centers, Inc	AZ	80,126
UMOM New Day Centers, Inc	AZ	187,584
UMOM New Day Centers, Inc	AZ	201,671
UMOM New Day Centers, Inc	AZ	347,382
United States Veterans Initiative	AZ	152,948
United States Veterans Initiative	AZ	496,557
WINR/Women In New Recovery	AZ	46,862
1736 Family Crisis Center	CA	521,823
A Community of Friends	CA	52,250
A Community of Friends	CA	175,000
A Community of Friends	CA	213,003

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Abode Services	CA	529,612
Abode Services	CA	133,333
Abode Services	CA	827,904
Affordable Housing Associates	CA	36,665
Alameda County	CA	517,548
Alameda County	CA	1,090,393
Alameda County	CA	181,335
Alameda County	CA	1,042,272
Alameda County	CA	4,307,424
Alameda County	CA	184,771
Alameda County	CA	157,189
Alameda County	CA	384,582
Alameda County	CA	44,122
Alameda County	CA	140,028
Alameda County	CA	287,040
Alameda County	CA	42,170
Alameda County	CA	687,732
Alameda County	CA	192,266
Alameda County	CA	79,800
Alameda County Allied Housing Program	CA	35,490
Alliance for Housing and Healing dba The Serra Project	CA	303,173
Alliance for Housing and Healing dba The Serra Project	CA	326,848
Alpha Project	CA	159,345
Amador-Tuolumne Community Action Agency	CA	39,900
Amador-Tuolumne Community Action Agency	CA	30,819
American Family Housing	CA	315,478
American Family Housing	CA	286,276
American Family Housing	CA	419,662
American Family Housing	CA	935,491
Anaheim Supportive Housing for Senior Adults, Inc	CA	139,020
Angels of Grace, Inc	CA	93,000
Anka Behavioral Health Services	CA	155,027
Anka Behavioral Health Services	CA	121,776
Anka Behavioral Health Services	CA	105,311
Anka Behavioral Health Services	CA	494,271
Antelope Valley Domestic Violence Council	CA	143,911
Arcata House, Inc	CA	108,844
Arcata House, Inc	CA	37,606
Arcata House, Inc	CA	27,562
Arcata House, Inc	CA	60,714
Asian Pacific Women's Center, Inc	CA	149,813
Aspiranet	CA	279,972
Berkeley Food and Housing Project	CA	242,217
Berkeley Food and Housing Project	CA	253,627
Berkeley Food and Housing Project	CA	141,019
Bethany Services dba Bakersfield Homeless Center	CA	176,881
Bethany Services dba Bakersfield Homeless Center	CA	90,000
Bethany Services dba Bakersfield Homeless Center	CA	269,408
Beyond Shelter	CA	141,910
Bill Wilson Center	CA	548,476
Bill Wilson Center	CA	303,562
Bonita House, Inc	CA	33,080
Buckelew Programs	CA	196,698
Buckelew Programs	CA	53,436
Buckelew Programs	CA	66,659
Buckelew Programs	CA	27,476
Buckelew Programs	CA	164,490
Buckelew Programs	CA	170,040
Building Opportunities for Self-Sufficiency	CA	74,500
Building Opportunities for Self-Sufficiency	CA	96,147
Building Opportunities for Self-Sufficiency	CA	164,038
Building Opportunities for Self-Sufficiency	CA	274,259
Building Opportunities for Self-Sufficiency	CA	114,997
Building Opportunities for Self-Sufficiency	CA	736,155
Building Opportunities for Self-Sufficiency	CA	185,727
Butte County Department of Behavioral Health	CA	26,835
Butte County Department of Behavioral Health	CA	57,043
Butte County Department of Behavioral Health	CA	52,510
California Council for Veterans Affairs, Inc	CA	136,216
Caminar	CA	48,547
Caminar	CA	60,725
Caminar	CA	32,409

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Caminar	CA	25,000
Catholic Charities CYO	CA	140,267
Catholic Charities of Los Angeles, Inc	CA	142,900
Catholic Charities of Santa Clara County	CA	703,549
Catholic Charities of Santa Clara County	CA	378,173
Catholic Charities of Santa Clara County	CA	488,880
Catholic Charities of Santa Clara County	CA	464,444
Catholic Charities of the Diocese of Santa Rosa	CA	80,424
Catholic Charities of the Diocese of Santa Rosa	CA	74,963
Catholic Charities, Diocese of San Diego	CA	33,333
Center for Human Rights and Constitutional Law, Inc	CA	134,943
Center for Human Services	CA	42,879
Center Point, Inc	CA	479,316
Center Point, Inc	CA	42,210
Central City Lutheran Mission	CA	75,046
Central City Lutheran Mission	CA	67,630
Central Coast HIV/AIDS Services	CA	129,312
City and County of San Francisco	CA	684,014
City and County of San Francisco	CA	508,873
City and County of San Francisco	CA	372,678
City and County of San Francisco	CA	923,892
City and County of San Francisco	CA	127,185
City and County of San Francisco	CA	80,724
City and County of San Francisco	CA	314,424
City and County of San Francisco	CA	85,752
City and County of San Francisco	CA	132,117
City and County of San Francisco	CA	240,685
City and County of San Francisco	CA	857,280
City and County of San Francisco	CA	331,020
City and County of San Francisco	CA	52,740
City and County of San Francisco	CA	562,692
City and County of San Francisco	CA	83,568
City and County of San Francisco	CA	954,809
City and County of San Francisco	CA	964,440
City and County of San Francisco	CA	1,173,199
City and County of San Francisco	CA	160,740
City and County of San Francisco	CA	134,607
City and County of San Francisco	CA	214,320
City and County of San Francisco	CA	192,888
City and County of San Francisco	CA	1,071,900
City and County of San Francisco	CA	234,609
City and County of San Francisco	CA	621,528
City and County of San Francisco	CA	312,144
City and County of San Francisco	CA	114,640
City and County of San Francisco	CA	303,572
City and County of San Francisco	CA	107,160
City and County of San Francisco	CA	390,552
City and County of San Francisco	CA	359,777
City and County of San Francisco	CA	381,721
City and County of San Francisco	CA	179,026
City and County of San Francisco	CA	270,923
City and County of San Francisco	CA	515,868
City and County of San Francisco	CA	75,407
City and County of San Francisco	CA	883,824
City and County of San Francisco	CA	180,074
City and County of San Francisco	CA	703,824
City and County of San Francisco	CA	760,152
City and County of San Francisco	CA	355,787
City and County of San Francisco	CA	637,884
City of Berkeley	CA	126,624
City of Berkeley	CA	1,952,112
City of Berkeley	CA	455,196
City of Berkeley	CA	123,192
City of Davis	CA	106,752
City of Fremont	CA	269,790
City of Glendale/Glendale Housing Authority	CA	21,420
City of Glendale/Glendale Housing Authority	CA	185,425
City of Glendale/Glendale Housing Authority	CA	160,560
City of Glendale/Glendale Housing Authority	CA	217,292
City of Glendale/Glendale Housing Authority	CA	299,100
City of Glendale/Glendale Housing Authority	CA	753,330
City of Glendale/Glendale Housing Authority	CA	74,624

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
City of Glendale/Glendale Housing Authority	CA	154,776
City of Glendale/Glendale Housing Authority	CA	93,000
City of Glendale/Glendale Housing Authority	CA	148,156
City of Glendale/Glendale Housing Authority	CA	153,802
City of Glendale/Glendale Housing Authority	CA	181,966
City of Long Beach	CA	102,363
City of Long Beach	CA	452,460
City of Long Beach	CA	50,085
City of Long Beach	CA	165,122
City of Long Beach	CA	650,823
City of Long Beach	CA	168,912
City of Long Beach	CA	220,638
City of Long Beach	CA	50,017
City of Long Beach	CA	102,327
City of Long Beach	CA	182,128
City of Long Beach	CA	241,279
City of Long Beach	CA	284,097
City of Long Beach	CA	128,436
City of Long Beach	CA	367,278
City of Long Beach	CA	88,299
City of Long Beach	CA	378,202
City of Long Beach	CA	350,396
City of Long Beach	CA	105,084
City of Long Beach	CA	46,998
City of Long Beach	CA	45,178
City of Long Beach	CA	218,639
City of Long Beach	CA	222,721
City of Long Beach	CA	256,340
City of Long Beach	CA	105,870
City of Long Beach	CA	285,838
City of Long Beach	CA	52,209
City of Long Beach	CA	132,884
City of Long Beach	CA	196,623
City of Long Beach	CA	245,196
City of Long Beach	CA	244,998
City of Long Beach	CA	343,145
City of Long Beach	CA	102,379
City of Long Beach	CA	351,900
City of Long Beach	CA	351,508
City of Oceanside	CA	146,702
City of Oxnard	CA	52,747
City of Oxnard	CA	13,490
City of Oxnard	CA	123,348
City of Pomona	CA	162,154
City of Pomona Housing Authority	CA	1,065,192
City of Santa Monica	CA	491,791
City of Santa Monica Housing Authority	CA	78,840
City of Santa Monica Housing Authority	CA	1,763,016
City of Tulare	CA	494,340
City of Tulare	CA	177,660
City of Woodland	CA	46,240
City of Woodland	CA	177,343
Clinca Sierra Vista, Inc	CA	662,832
Clinca Sierra Vista, Inc	CA	93,903
Coalition of Homeless Services Providers	CA	70,875
Colette's Children Home, Inc	CA	127,309
Colette's Children Home, Inc	CA	163,898
Colette's Children Home, Inc	CA	157,278
Colette's Children Home, Inc	CA	163,898
Colette's Children Home, Inc	CA	137,882
Committee on the Shelterless	CA	75,000
Committee on the Shelterless	CA	78,359
Committee on the Shelterless	CA	16,000
Committee on the Shelterless	CA	29,744
Community Action Agency of Butte County, Inc	CA	45,880
Community Action Agency of Butte County, Inc	CA	53,946
Community Action Agency of Butte County, Inc	CA	105,000
Community Action of Napa Valley	CA	26,938
Community Action Partnership of Madera County, Inc	CA	175,107
Community Action Partnership of San Bernardino County	CA	250,158
Community Action Partnership of Sonoma County	CA	40,624
Community Action Partnership of Sonoma County	CA	107,000

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Community Assistance Network	CA	47,158
Community Awareness & Treatment Services, Inc	CA	348,153
Community Development Commission of Mendocino County	CA	47,712
Community Development Commission of Mendocino County	CA	1,424,820
Community Housing and Shelter Services	CA	68,341
Community Housing and Shelter Services	CA	95,313
Community Housing Partnership	CA	157,490
Community Housing Sonoma County	CA	132,078
Community HousingWorks	CA	104,559
Community HousingWorks	CA	63,000
Community HousingWorks	CA	43,557
Community HousingWorks	CA	581,744
Community Resource Center	CA	55,000
Community Support Network	CA	40,842
Community Technology Alliance	CA	151,926
Community Technology Alliance	CA	303,716
Community Technology Alliance	CA	89,985
Community Working Group, Inc	CA	43,100
Compass Family Services	CA	295,006
Contra Costa Health Services	CA	513,028
Contra Costa Health Services	CA	177,477
Contra Costa Health Services	CA	158,041
Contra Costa Health Services	CA	290,355
CORA (Community Overcoming Relationship Abuse)	CA	225,375
County of Kern Department of Mental Health Services	CA	74,592
County of Kern Department of Mental Health Services	CA	82,050
County of Los Angeles Department of Children and Family Serv	CA	197,621
County of Los Angeles Department of Children and Family Serv	CA	384,676
County of Los Angeles Department of Children and Family Serv	CA	89,062
County of Los Angeles Department of Children and Family Serv	CA	274,400
County of Los Angeles, Housing Authority	CA	673,500
County of Los Angeles, Housing Authority	CA	336,084
County of Los Angeles, Housing Authority	CA	1,263,468
County of Los Angeles, Housing Authority	CA	556,308
County of Los Angeles, Housing Authority	CA	316,560
County of Los Angeles, Housing Authority	CA	2,975,976
County of Los Angeles, Housing Authority	CA	2,815,200
County of Los Angeles, Housing Authority	CA	265,860
County of Los Angeles, Housing Authority	CA	470,352
County of Los Angeles, Housing Authority	CA	351,168
County of Los Angeles, Housing Authority	CA	288,528
County of Los Angeles, Housing Authority	CA	182,988
County of Los Angeles, Housing Authority	CA	325,104
County of Los Angeles, Housing Authority	CA	186,816
County of Los Angeles, Housing Authority	CA	439,500
County of Los Angeles, Housing Authority	CA	744,756
County of Napa	CA	125,794
County of Napa	CA	13,500
County of Napa	CA	19,950
County of Nevada	CA	134,160
County of Riverside	CA	135,756
County of Riverside	CA	200,277
County of Riverside	CA	136,166
County of Riverside	CA	325,277
County of Riverside	CA	476,070
County of Riverside	CA	216,871
County of Riverside	CA	72,654
County of Riverside	CA	350,857
County of Riverside	CA	260,498
County of Riverside	CA	59,440
County of Riverside	CA	646,847
County of Riverside	CA	275,000
County of Riverside	CA	80,591
County of Riverside	CA	42,192
County of Riverside	CA	523,248
County of Riverside	CA	141,261
County of Riverside	CA	89,373
County of Riverside	CA	525,000
County of Riverside	CA	218,484
County of Riverside	CA	349,200
County of Riverside	CA	408,234
County of Sacramento	CA	226,000

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
County of Sacramento	CA	4,213,380
County of Sacramento	CA	3,061,636
County of Sacramento	CA	362,022
County of Sacramento	CA	128,148
County of Sacramento	CA	89,932
County of Sacramento	CA	187,714
County of Sacramento	CA	102,107
County of Sacramento	CA	163,512
County of Sacramento	CA	154,345
County of Sacramento	CA	499,037
County of Sacramento	CA	275,838
County of Sacramento	CA	99,959
County of Sacramento	CA	81,746
County of Sacramento	CA	314,738
County of Sacramento	CA	497,726
County of Sacramento	CA	154,110
County of Sacramento	CA	123,496
County of Sacramento	CA	316,033
County of Sacramento	CA	398,509
County of Sacramento	CA	259,830
County of Sacramento	CA	630,636
County of Sacramento	CA	327,869
County of Sacramento	CA	178,849
County of Sacramento	CA	229,107
County of Sacramento	CA	312,138
County of Sacramento	CA	256,032
County of San Diego	CA	222,240
County of San Diego	CA	205,368
County of San Diego	CA	149,208
County of San Diego	CA	162,996
County of San Diego	CA	611,436
County of San Luis Obispo	CA	48,091
County of San Luis Obispo	CA	473,981
County of San Luis Obispo	CA	107,100
County of San Luis Obispo	CA	211,395
County of San Luis Obispo	CA	55,000
County of Santa Barbara	CA	126,163
County of Santa Cruz Health Services Agency	CA	361,339
County of Santa Cruz Health Services Agency	CA	66,074
County of Ventura Human Services Agency	CA	217,276
County of Ventura Human Services Agency	CA	31,214
County of Ventura Human Services Agency	CA	163,795
County of Ventura Human Services Agency	CA	49,085
Covenant House California	CA	129,736
Crisis House, Inc	CA	189,081
Crisis House, Inc	CA	445,011
Domestic Violence Solutions for Santa Barbara County	CA	76,219
Eden Investments, Inc	CA	79,240
Emergency Housing Consortium of Santa Clara County	CA	262,722
Emergency Housing Consortium of Santa Clara County	CA	58,747
Emergency Housing Consortium of Santa Clara County	CA	93,866
Episcopal Community Services	CA	509,328
Episcopal Community Services	CA	557,110
Fairfield Suisun Community Action Council, Inc	CA	186,290
Faithworks Community Coalition	CA	17,823
Families Forward	CA	132,941
Families Forward	CA	73,819
Families In Transition of Santa Cruz County, Inc	CA	182,448
Families In Transition of Santa Cruz County, Inc	CA	181,158
Family Service Association	CA	1,131,661
Family Supportive Housing, Inc	CA	97,368
Family Supportive Housing, Inc	CA	46,036
Family Supportive Housing, Inc	CA	201,927
Family Supportive Housing, Inc	CA	211,231
Filipino American Service Group, Inc	CA	190,449
Flood Bakersfield Ministries, Inc	CA	89,038
Foothill Family Shelter	CA	34,125
Ford Street Project	CA	73,816
Frazee Community Center	CA	26,250
Fred Finch Children's Home	CA	651,460
Fresno County Economic Opportunities Commission	CA	585,863
Fresno County Economic Opportunities Commission	CA	288,978

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Fresno County Economic Opportunities Commission	CA	180,569
Friendship Shelter, Inc	CA	68,136
Fullerton Interfaith Emergency Service	CA	252,000
Garden Park Apartments Community (GPAC)	CA	224,870
Glenn County Human Resource Agency	CA	30,000
Goodwill Industries of the Greater Eastbay	CA	863,257
Gramercy Housing Group	CA	210,960
Greater Bakersfield Legal Assistance, Inc	CA	120,044
Greater Richmond Interfaith Program	CA	97,817
Greater Richmond Interfaith Program	CA	75,306
Harbor Interfaith Services, Inc	CA	127,673
High Desert Homeless Services, Inc	CA	389,625
Home Start, Inc	CA	713,464
Homeless Services Center	CA	142,591
Homes For Life Foundation	CA	337,589
Homes For Life Foundation	CA	72,067
Homeward Bound of Marin	CA	197,531
Homeward Bound of Marin	CA	50,148
Homeward Bound of Marin	CA	30,503
Homeward Bound of Marin	CA	326,216
Homeward Bound of Marin	CA	15,394
House of Prayer Gospel Outreach Ministries, Inc	CA	915,181
Housing Authority City of Fresno	CA	645,047
Housing Authority City of Fresno	CA	75,000
Housing Authority City of Fresno	CA	642,288
Housing Authority City of Fresno	CA	173,628
Housing Authority City of Fresno	CA	311,712
Housing Authority City of Fresno	CA	135,000
Housing Authority of Contra Costa County	CA	2,957,976
Housing Authority of Contra Costa County	CA	211,680
Housing Authority of Contra Costa County	CA	423,360
Housing Authority of Contra Costa County	CA	56,448
Housing Authority of the City of Los Angeles (HACLA)	CA	823,272
Housing Authority of the City of Los Angeles (HACLA)	CA	502,068
Housing Authority of the City of Los Angeles (HACLA)	CA	233,520
Housing Authority of the City of Los Angeles (HACLA)	CA	280,224
Housing Authority of the City of Los Angeles (HACLA)	CA	56,304
Housing Authority of the City of Los Angeles (HACLA)	CA	334,200
Housing Authority of the City of Los Angeles (HACLA)	CA	450,312
Housing Authority of the City of Los Angeles (HACLA)	CA	157,680
Housing Authority of the City of Los Angeles (HACLA)	CA	3,084,720
Housing Authority of the City of Los Angeles (HACLA)	CA	211,140
Housing Authority of the City of Los Angeles (HACLA)	CA	3,094,140
Housing Authority of the City of Los Angeles (HACLA)	CA	1,313,220
Housing Authority of the City of Los Angeles (HACLA)	CA	738,816
Housing Authority of the City of Los Angeles (HACLA)	CA	1,774,980
Housing Authority of the City of Los Angeles (HACLA)	CA	473,604
Housing Authority of the City of Los Angeles (HACLA)	CA	1,909,680
Housing Authority of the City of Los Angeles (HACLA)	CA	152,436
Housing Authority of the City of Los Angeles (HACLA)	CA	308,568
Housing Authority of the City of Los Angeles (HACLA)	CA	363,768
Housing Authority of the City of Los Angeles (HACLA)	CA	563,040
Housing Authority of the City of Los Angeles (HACLA)	CA	332,448
Housing Authority of the City of Los Angeles (HACLA)	CA	3,041,964
Housing Authority of the City of Los Angeles (HACLA)	CA	233,520
Housing Authority of the City of Los Angeles (HACLA)	CA	116,760
Housing Authority of the City of Los Angeles (HACLA)	CA	1,261,656
Housing Authority of the City of Los Angeles (HACLA)	CA	163,464
Housing Authority of the City of Los Angeles (HACLA)	CA	422,280
Housing Authority of the City of Los Angeles (HACLA)	CA	657,000
Housing Authority of the City of Los Angeles (HACLA)	CA	605,268
Housing Authority of the City of Los Angeles (HACLA)	CA	338,604
Housing Authority of the City of Los Angeles (HACLA)	CA	590,160
Housing Authority of the City of Los Angeles (HACLA)	CA	405,012
Housing Authority of the City of Los Angeles (HACLA)	CA	287,508
Housing Authority of the City of Los Angeles (HACLA)	CA	2,409,000
Housing Authority of the City of Los Angeles (HACLA)	CA	393,156
Housing Authority of the City of Los Angeles (HACLA)	CA	225,216
Housing Authority of the City of Los Angeles (HACLA)	CA	911,688
Housing Authority of the City of Los Angeles (HACLA)	CA	405,012
Housing Authority of the City of Los Angeles (HACLA)	CA	525,420
Housing Authority of the City of Napa	CA	65,160

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Housing Authority of the City of San Buenaventura	CA	127,140
Housing Authority of the City of Santa Barbara	CA	117,360
Housing Authority of the City of Santa Barbara	CA	566,460
Housing Authority of the City of Santa Barbara	CA	117,360
Housing Authority of the County of Butte	CA	94,152
Housing Authority of the County of Kern	CA	414,660
Housing Authority of the County of Kern	CA	440,880
Housing Authority of the County of Kern	CA	1,302,900
Housing Authority of the County of Kern	CA	497,880
Housing Authority of the County of Kern	CA	272,664
Housing Authority of the County of Kern	CA	292,656
Housing Authority of the County of Marin	CA	924,648
Housing Authority of the County of Marin	CA	52,740
Housing Authority of the County of Monterey	CA	159,768
Housing Authority of the County of Monterey	CA	367,867
Housing Authority of the County of San Bernardino	CA	2,243,280
Housing Authority of the County of San Bernardino	CA	434,904
Housing Authority of the County of San Mateo	CA	52,740
Housing Authority of the County of San Mateo	CA	1,546,020
Housing Authority of the County of San Mateo	CA	214,380
Housing Authority of the County of San Mateo	CA	763,433
Housing Authority of the County of San Mateo	CA	1,044,756
Housing Authority of the County of San Mateo	CA	157,212
Housing Authority of the County of Santa Clara	CA	281,880
Housing Authority of the County of Santa Clara	CA	3,085,116
Housing Authority of the County of Santa Cruz	CA	450,696
Housing Authority of the County of Santa Cruz	CA	29,424
Housing Authority of the County of Santa Cruz	CA	56,000
Housing Authority of the County of Stanislaus	CA	563,340
Housing Authority of the County of Stanislaus	CA	138,240
Human Options, Inc	CA	111,122
Human Options, Inc	CA	30,793
Humboldt Bay Housing Development Corporation	CA	53,903
Humboldt, County of, DBA-Dept. of Health and Human Services	CA	82,353
Immanuel Housing Inc	CA	76,192
Individuals Now dba Social Advocates for Youth	CA	40,000
Inland Behavioral and Health Service, Inc	CA	367,063
Inland Counties Legal Services, Inc	CA	38,395
Inland Counties Legal Services, Inc	CA	54,531
Inland Temporary Homes	CA	424,835
Inland Temporary Homes	CA	128,173
InnVision the Way Home	CA	163,719
InnVision the Way Home	CA	103,408
InnVision the Way Home	CA	28,530
InnVision the Way Home	CA	74,078
InnVision the Way Home	CA	228,335
InnVision the Way Home	CA	74,266
InnVision the Way Home	CA	140,741
InnVision the Way Home	CA	88,714
InnVision the Way Home	CA	131,928
InnVision the Way Home	CA	164,635
InnVision the Way Home	CA	348,831
Interfaith Shelter Network, Inc	CA	24,780
Interfaith Shelter Network, Inc	CA	44,536
Interfaith Shelter Network, Inc	CA	61,134
Interim, Inc	CA	97,407
Interim, Inc	CA	138,168
Interim, Inc	CA	189,264
Interval House	CA	73,268
Jamboree Housing Corporation	CA	400,000
Jewish Family Service of Los Angeles	CA	180,498
JWCH Institute, Inc	CA	308,999
Kings Community Action Organization	CA	230,418
Kings United Way	CA	158,008
L.A. Family Housing	CA	355,664
L.A. Family Housing	CA	363,659
Larkin Street Youth Services	CA	110,624
Life Community Development	CA	365,610
LifeLong Medical Care	CA	539,398
Lompoc Housing and Community Development Corporation	CA	36,565
Lompoc Housing and Community Development Corporation	CA	49,875
Los Angeles Homeless Services Authority	CA	156,635

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Los Angeles Homeless Services Authority	CA	110,824
Los Angeles Homeless Services Authority	CA	286,999
Los Angeles Homeless Services Authority	CA	381,940
Los Angeles Homeless Services Authority	CA	113,971
Los Angeles Homeless Services Authority	CA	130,971
Los Angeles Homeless Services Authority	CA	125,824
Los Angeles Homeless Services Authority	CA	149,846
Los Angeles Homeless Services Authority	CA	71,796
Los Angeles Homeless Services Authority	CA	402,558
Los Angeles Homeless Services Authority	CA	223,552
Los Angeles Homeless Services Authority	CA	366,345
Los Angeles Homeless Services Authority	CA	51,771
Los Angeles Homeless Services Authority	CA	331,546
Los Angeles Homeless Services Authority	CA	140,300
Los Angeles Homeless Services Authority	CA	263,401
Los Angeles Homeless Services Authority	CA	259,875
Los Angeles Homeless Services Authority	CA	282,429
Los Angeles Homeless Services Authority	CA	61,041
Los Angeles Homeless Services Authority	CA	201,506
Los Angeles Homeless Services Authority	CA	206,461
Los Angeles Homeless Services Authority	CA	282,734
Los Angeles Homeless Services Authority	CA	198,507
Los Angeles Homeless Services Authority	CA	199,999
Los Angeles Homeless Services Authority	CA	220,461
Los Angeles Homeless Services Authority	CA	209,799
Los Angeles Homeless Services Authority	CA	249,361
Los Angeles Homeless Services Authority	CA	140,466
Los Angeles Homeless Services Authority	CA	121,874
Los Angeles Homeless Services Authority	CA	337,805
Los Angeles Homeless Services Authority	CA	385,943
Los Angeles Homeless Services Authority	CA	178,238
Los Angeles Homeless Services Authority	CA	147,775
Los Angeles Homeless Services Authority	CA	262,085
Los Angeles Homeless Services Authority	CA	253,423
Los Angeles Homeless Services Authority	CA	198,095
Los Angeles Homeless Services Authority	CA	186,956
Los Angeles Homeless Services Authority	CA	489,638
Los Angeles Homeless Services Authority	CA	134,592
Los Angeles Homeless Services Authority	CA	106,479
Los Angeles Homeless Services Authority	CA	157,436
Los Angeles Homeless Services Authority	CA	258,248
Los Angeles Homeless Services Authority	CA	34,999
Los Angeles Homeless Services Authority	CA	147,972
Los Angeles Homeless Services Authority	CA	259,701
Los Angeles Homeless Services Authority	CA	244,623
Los Angeles Homeless Services Authority	CA	149,706
Los Angeles Homeless Services Authority	CA	387,581
Los Angeles Homeless Services Authority	CA	68,320
Los Angeles Homeless Services Authority	CA	120,164
Los Angeles Homeless Services Authority	CA	112,450
Los Angeles Homeless Services Authority	CA	267,828
Los Angeles Homeless Services Authority	CA	476,401
Los Angeles Homeless Services Authority	CA	151,802
Los Angeles Homeless Services Authority	CA	241,135
Los Angeles Homeless Services Authority	CA	76,059
Los Angeles Homeless Services Authority	CA	161,539
Los Angeles Homeless Services Authority	CA	137,485
Los Angeles Homeless Services Authority	CA	70,031
Los Angeles Homeless Services Authority	CA	364,882
Los Angeles Homeless Services Authority	CA	223,929
Los Angeles Homeless Services Authority	CA	169,419
Los Angeles Homeless Services Authority	CA	59,052
Los Angeles Homeless Services Authority	CA	193,880
Los Angeles Homeless Services Authority	CA	189,000
Los Angeles Homeless Services Authority	CA	362,250
Los Angeles Homeless Services Authority	CA	248,942
Los Angeles Homeless Services Authority	CA	182,955
Los Angeles Homeless Services Authority	CA	54,498
Los Angeles Homeless Services Authority	CA	162,775
Los Angeles Homeless Services Authority	CA	629,647
Los Angeles Homeless Services Authority	CA	287,114
Los Angeles Homeless Services Authority	CA	256,710

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Los Angeles Homeless Services Authority	CA	118,346
Los Angeles Homeless Services Authority	CA	119,280
Los Angeles Homeless Services Authority	CA	177,929
Los Angeles Homeless Services Authority	CA	196,350
Los Angeles Homeless Services Authority	CA	66,685
Los Angeles Homeless Services Authority	CA	83,913
Los Angeles Homeless Services Authority	CA	575,164
Los Angeles Homeless Services Authority	CA	63,687
Los Angeles Homeless Services Authority	CA	200,258
Los Angeles Homeless Services Authority	CA	63,655
Los Angeles Homeless Services Authority	CA	400,000
Los Angeles Homeless Services Authority	CA	246,780
Los Angeles Homeless Services Authority	CA	573,405
Los Angeles Homeless Services Authority	CA	93,310
Los Angeles Homeless Services Authority	CA	157,706
Los Angeles Homeless Services Authority	CA	94,295
Los Angeles Homeless Services Authority	CA	168,843
Los Angeles Homeless Services Authority	CA	50,225
Los Angeles Homeless Services Authority	CA	675,466
Los Angeles Homeless Services Authority	CA	349,666
Los Angeles Homeless Services Authority	CA	527,602
Los Angeles Homeless Services Authority	CA	385,943
Los Angeles Homeless Services Authority	CA	210,433
Los Angeles Homeless Services Authority	CA	92,217
Los Angeles Homeless Services Authority	CA	225,355
Los Angeles Homeless Services Authority	CA	570,870
Los Angeles Homeless Services Authority	CA	400,000
Los Angeles Homeless Services Authority	CA	249,999
Los Angeles Homeless Services Authority	CA	154,997
Los Angeles Homeless Services Authority	CA	24,331
Los Angeles Homeless Services Authority	CA	131,286
Los Angeles Homeless Services Authority	CA	143,432
Los Angeles Homeless Services Authority	CA	159,179
Los Angeles Homeless Services Authority	CA	96,975
Los Angeles Homeless Services Authority	CA	344,504
Los Angeles Homeless Services Authority	CA	97,677
Los Angeles Youth Network	CA	40,528
Many Mansions a California Non Profit Corporation	CA	59,911
Many Mansions a California Non Profit Corporation	CA	60,952
Many Mansions a California Non Profit Corporation	CA	61,600
Many Mansions a California Non Profit Corporation	CA	239,499
Many Mansions a California Non Profit Corporation	CA	39,998
Marin Abused Women's Services	CA	64,540
Marin Abused Women's Services	CA	55,642
Marjaree Mason Center, Inc	CA	65,482
Marjaree Mason Center, Inc	CA	445,000
Marjaree Mason Center, Inc	CA	108,086
Marjaree Mason Center, Inc	CA	287,840
Mary Lind Recovery Centers	CA	442,317
Mendocino County Health and Human Services Agency	CA	200,412
Mendocino County Health and Human Services Agency	CA	28,008
Mendocino County Health and Human Services Agency	CA	130,736
Mental Health Association of San Mateo County	CA	39,530
Mental Health Association of San Mateo County	CA	73,271
Mental Health Systems Inc	CA	273,283
Mental Health Systems Inc	CA	287,042
Mental Health Systems Inc	CA	74,843
Mental Health Systems Inc	CA	279,307
Merced County Community Action Board	CA	81,163
Merced County Department of Mental Health	CA	128,063
Merced County Department of Mental Health	CA	287,576
Mercy House Living Centers	CA	589,493
Mercy House Living Centers	CA	118,000
Mercy House Living Centers	CA	90,240
New Directions, Inc	CA	574,640
New Economics for Women	CA	155,254
New Hope Village, Inc	CA	66,675
North Coast Substance Abuse Council, Inc	CA	109,727
North County Interfaith Council, Inc	CA	43,588
North County Interfaith Council, Inc	CA	82,129
North County Interfaith Council, Inc	CA	64,214
North County Interfaith Council, Inc	CA	103,415

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
North County Interfaith Council, Inc	CA	42,370
North County Interfaith Council, Inc	CA	346,689
North County Solutions for Change	CA	26,661
Northern Valley Catholic Social Service, Inc	CA	91,096
Northern Valley Catholic Social Service, Inc	CA	129,868
OC Partnership	CA	433,263
Ocean Park Community Center	CA	305,938
Orange Coast Interfaith Shelter	CA	283,129
Orange County Housing Authority	CA	1,047,960
Orange County Housing Authority	CA	697,620
Orange County Housing Authority	CA	1,007,556
Orange County Housing Authority	CA	3,100,644
Orange County Housing Authority	CA	408,900
Orange County Housing Authority	CA	502,788
Orange County Housing Authority	CA	547,632
Oxnard Housing Authority	CA	144,000
Pacific Clinics	CA	960,122
Pajaro Valley Shelter Services	CA	13,623
Pasadena Community Development Commission	CA	43,724
Pasadena Community Development Commission	CA	733,764
Pasadena Community Development Commission	CA	116,760
Pasadena Community Development Commission	CA	235,695
Pasadena Community Development Commission	CA	122,097
Pasadena Community Development Commission	CA	53,904
Pasadena Community Development Commission	CA	119,382
Pasadena Community Development Commission	CA	155,416
Pasadena Community Development Commission	CA	121,404
Pasadena Community Development Commission	CA	163,700
Pasadena Community Development Commission	CA	137,754
Pasadena Community Development Commission	CA	106,095
PATH (People Assisting the Homeless)	CA	114,529
PATH (People Assisting the Homeless)	CA	100,275
PATH (People Assisting the Homeless)	CA	209,161
Penny Lane Centers	CA	174,969
Placer County Health and Human Services Adult System of Care	CA	299,927
Placer County Health and Human Services Adult System of Care	CA	298,716
Placer Women's Center dba PEACE for Families	CA	217,898
Poor and the Homeless-Tehama County Coalition	CA	111,173
Poverello House	CA	354,169
Project Understanding	CA	53,642
Rainbow Services, Ltd	CA	255,012
Redwood Community Action Agency	CA	38,359
Redwood Community Action Agency	CA	118,074
Regional Task Force on the Homeless Inc	CA	108,914
Regional Task Force on the Homeless Inc	CA	89,798
Regional Task Force on the Homeless Inc	CA	222,007
Resources for Community Development	CA	70,187
Resources for Community Development	CA	55,392
Resources for Community Development	CA	75,528
Resources for Independent Living, Inc	CA	97,876
Reynaissance Family Centr	CA	41,650
Rubicon Programs Inc	CA	1,018,766
Rubicon Programs Inc	CA	221,628
Rubicon Programs Inc	CA	94,500
Rubicon Programs Inc	CA	44,013
Rubicon Programs Inc	CA	204,120
Rubicon Programs Inc	CA	654,229
Salvation Army	CA	102,008
Samaritan House	CA	105,000
San Diego Housing Commission	CA	216,696
San Diego Housing Commission	CA	365,196
San Diego Housing Commission	CA	275,496
San Diego Housing Commission	CA	413,640
San Diego Housing Commission	CA	134,976
San Diego Housing Commission	CA	1,026,684
San Diego Youth & Community Services	CA	87,571
San Francisco Network Ministries Housing Corporation	CA	70,749
San Joaquin County	CA	1,581,288
San Joaquin County	CA	231,595
San Joaquin County	CA	398,821
San Joaquin County	CA	342,120
San Joaquin County	CA	354,644

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
San Joaquin County	CA	419,040
San Joaquin County	CA	255,328
San Luis Obispo County	CA	60,000
SANTA BARBARA COMMUNITY HOUSING CORP	CA	99,444
Santa Barbara County	CA	17,850
Santa Barbara County	CA	160,585
Santa Barbara County	CA	102,809
Santa Barbara County—ADMHS	CA	115,315
Santa Clara Unified School District	CA	200,534
Santa Clara Valley Health and Hospital System—MHD	CA	351,150
Santa Clara Valley Health and Hospital System—MHD	CA	514,196
Santa Cruz Community Counseling Center	CA	15,353
Santa Cruz Community Counseling Center	CA	41,540
Santa Paula Housing Authority	CA	146,700
Service League of San Mateo County	CA	44,996
Shelter Network of San Mateo County	CA	52,500
Shelter Network of San Mateo County	CA	494,788
Shelter Network of San Mateo County	CA	131,250
Shelter Network of San Mateo County	CA	225,750
Shelter Network of San Mateo County	CA	381,471
Shelter Network of San Mateo County	CA	131,250
Shelter Network of San Mateo County	CA	104,895
Shelter Outreach Plus	CA	166,599
Shelter Outreach Plus	CA	121,832
Shelter Outreach Plus	CA	115,999
SHELTER, Inc. of Contra Costa County	CA	277,845
SHELTER, Inc. of Contra Costa County	CA	254,417
SHELTER, Inc. of Contra Costa County	CA	407,333
SHELTER, Inc. of Contra Costa County	CA	692,099
SHELTER, Inc. of Contra Costa County	CA	80,797
SHIELDS For Families	CA	90,395
Sierra Presbyterian Church	CA	75,472
Single Room Occupancy Housing Corporation	CA	92,610
Single Room Occupancy Housing Corporation	CA	279,510
Single Room Occupancy Housing Corporation	CA	369,601
Solano County Health and Social Services	CA	80,502
Solano County Health and Social Services	CA	102,317
Solano County Health and Social Services	CA	109,925
Solano County Health and Social Services	CA	199,246
Sonoma County Community Development Commission	CA	215,976
Sonoma County Community Development Commission	CA	73,728
Sonoma County Community Development Commission	CA	135,329
Sonoma County Community Development Commission	CA	91,008
Sonoma County Community Development Commission	CA	794,256
South Bay Community Services, Inc	CA	96,843
South Bay Community Services, Inc	CA	96,832
South Bay Community Services, Inc	CA	86,951
South Central Health & Rehabilitation Program	CA	225,479
South County Housing Corporation	CA	91,011
South County Outreach	CA	175,959
South County Outreach	CA	50,191
Southern California Alcohol and Drug Programs, Inc	CA	355,942
Southern California Alcohol and Drug Programs, Inc	CA	380,345
St. Joseph Center	CA	47,246
St. Joseph's Family Center	CA	287,217
St. Vincent de Paul Society of San Francisco	CA	132,544
St. Vincent de Paul Village, Inc	CA	619,024
St. Vincent de Paul Village, Inc	CA	402,182
St. Vincent de Paul Village, Inc	CA	1,699,096
St. Vincent de Paul Village, Inc	CA	45,099
St. Vincent de Paul Village, Inc	CA	890,000
St. Vincent de Paul Village, Inc	CA	513,712
STAND! Against Domestic Violence	CA	75,571
Stanislaus Community Assistance Project	CA	156,929
Stanislaus Community Assistance Project	CA	262,085
Stanislaus Community Assistance Project	CA	118,333
Stanislaus Community Assistance Project	CA	291,998
Stanislaus County Affordable Housing Corp	CA	196,085
Step Up on Second Street, Inc	CA	126,727
Stop Homelessness in the Rio Hondo Area, Inc	CA	165,207
Su Casa ~ Ending Domestic Violence	CA	52,463
Swords to Plowshares Veterans Rights Organization	CA	232,623

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Swords to Plowshares Veterans Rights Organization	CA	254,335
Tarzana Treatment Centers, Inc	CA	188,491
Testimonial Community Love Center	CA	136,887
The Ark of Refuge, Inc	CA	208,502
The Association For Community Housing Solutions	CA	73,500
The Association For Community Housing Solutions	CA	113,400
The City of Oakland	CA	699,770
The City of Oakland	CA	259,824
The City of Oakland	CA	1,829,618
The City of Oakland	CA	245,146
The Eli Home, Inc	CA	524,275
The John Henry Foundation	CA	146,369
The Lazarus Project, Inc	CA	62,165
The Los Angeles Gay & Lesbian Community Services Center	CA	367,493
The Resource Connection of Amador and Calaveras Counties	CA	165,559
The Salvation Army	CA	158,521
The Salvation Army	CA	430,824
The Salvation Army	CA	83,137
The Salvation Army, a California Corporation	CA	86,437
The Salvation Army, a California Corporation	CA	218,221
The Salvation Army, a California Corporation	CA	172,089
The Salvation Army, a California Corporation	CA	360,500
The Salvation Army, a California Corporation	CA	169,948
The Salvation Army, a California Corporation	CA	221,485
The Salvation Army, a California Corporation	CA	174,133
The Salvation Army, a California Corporation	CA	360,500
The Salvation Army, a California Corporation	CA	276,039
The Salvation Army, a California corporation	CA	204,637
Thomas House Temporary Shelter	CA	87,833
Toby's House	CA	119,545
Transition House	CA	55,792
Transition House	CA	61,763
Transitional Living and Community Support, Inc	CA	246,855
Transitional Living and Community Support, Inc	CA	256,849
Transitional Living and Community Support, Inc	CA	305,666
Transitional Living and Community Support, Inc	CA	72,384
Turning Point Community Programs	CA	400,090
Turning Point Community Programs	CA	97,292
Turning Point Foundation	CA	249,999
Turning Point Foundation	CA	35,410
Turning Point Foundation	CA	26,074
Turning Point Foundation	CA	31,361
Turning Point of Central California, Inc	CA	74,602
Turning Point of Central California, Inc	CA	524,585
Turning Point of Central California, Inc	CA	424,116
Turning Point of Central California, Inc	CA	173,564
Turning Point of Central California, Inc	CA	274,893
United Christian Centers Of The Greater Sacramento Area, Inc	CA	46,527
United Friends of the Children	CA	295,657
United States Veterans Initiative	CA	289,795
United Way of Ventura County	CA	44,541
United Way of Ventura County	CA	44,541
Upward Bound House	CA	281,424
Vallejo Lord's Fellowship A/G	CA	42,600
Vallejo Lord's Fellowship A/G	CA	33,112
Valley Teen Ranch	CA	30,048
Venice Community Housing Corporation	CA	81,170
Venice Family Clinic	CA	284,842
Ventura County Behavioral Health	CA	214,608
Veterans First	CA	159,700
Veterans First	CA	211,664
Veterans First	CA	254,804
Veterans Transition Center	CA	81,115
Veterans Transition Center	CA	194,525
Victor Valley Domestic Violence, Inc	CA	283,537
Vietnam Veterans of California	CA	83,107
Vietnam Veterans of California	CA	265,807
Vietnam Veterans of San Diego	CA	202,850
Vietnam Veterans of San Diego	CA	209,600
Volunteers of America Southwest CA	CA	301,164
Volunteers of America Southwest CA	CA	298,453
Weingart Center Association, Inc	CA	314,478

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Weingart Center Association, Inc	CA	170,760
West Valley Community Services of Santa Clara County, Inc	CA	82,533
Whiteside Manor, Inc	CA	884,051
WISEPlace	CA	100,593
WomanHaven, Inc	CA	169,864
Women's Daytime Drop-In Center	CA	68,975
Women's Transitional Living Center, Inc	CA	74,559
Women's Transitional Living Center, Inc	CA	42,083
YMCA of Metropolitan Los Angeles	CA	177,486
YMCA of San Diego County	CA	178,739
Yolo Community Care Continuum	CA	84,423
YWCA of Central Orange County	CA	93,880
YWCA of San Diego County	CA	553,691
YWCA Sonoma County	CA	52,500
Catholic Charities and Community Services of the Archdiocese	CO	59,267
City Of Colorado Springs	CO	66,267
City of Colorado Springs, Colorado	CO	168,852
Colorado Coalition for the Homeless	CO	146,856
Colorado Coalition for the Homeless	CO	137,292
Colorado Coalition for the Homeless	CO	413,642
Colorado Coalition for the Homeless	CO	457,654
Colorado Coalition for the Homeless	CO	319,609
Colorado Coalition for the Homeless	CO	114,994
Colorado Coalition for the Homeless	CO	182,725
Colorado Coalition for the Homeless	CO	341,335
Colorado Coalition for the Homeless	CO	48,548
Colorado Coalition for the Homeless	CO	19,415
Colorado Coalition for the Homeless	CO	60,529
Colorado Coalition for the Homeless	CO	132,363
Colorado Coalition for the Homeless	CO	228,382
Colorado Coalition for the Homeless	CO	198,187
Colorado Coalition for the Homeless	CO	107,439
Colorado Coalition for the Homeless	CO	690,000
Colorado Coalition for the Homeless	CO	19,151
Colorado Coalition for the Homeless	CO	40,320
Colorado Coalition for the Homeless	CO	78,500
Colorado Coalition for the Homeless	CO	619,334
Colorado Coalition for the Homeless	CO	84,135
Colorado Coalition for the Homeless	CO	184,889
Colorado Coalition for the Homeless	CO	289,760
Colorado Coalition for the Homeless	CO	91,065
Colorado Coalition for the Homeless	CO	73,821
Colorado Coalition for the Homeless	CO	507,627
Colorado Coalition for the Homeless	CO	117,967
Colorado Coalition for the Homeless	CO	479,236
Colorado Coalition for the Homeless	CO	85,521
Colorado Coalition for the Homeless	CO	132,768
Colorado Coalition for the Homeless	CO	109,944
Colorado Coalition for the Homeless	CO	108,293
Colorado Coalition for the Homeless	CO	276,339
Colorado Department of Human Services	CO	2,845,872
Colorado Department of Human Services	CO	87,396
Colorado Department of Human Services	CO	368,856
Colorado Department of Human Services	CO	260,184
Colorado Department of Human Services	CO	138,312
Colorado Springs Housing Authority	CO	95,472
Community Housing Services, Inc	CO	970,595
Del Norte NDC	CO	832,033
Del Norte NDC	CO	131,136
Denver Department of Human Services	CO	478,176
Denver Department of Human Services	CO	171,936
Denver Department of Human Services	CO	391,632
Denver Department of Human Services	CO	191,040
Denver Department of Human Services	CO	114,624
Denver Department of Human Services	CO	75,456
Denver Department of Human Services	CO	114,624
Denver Department of Human Services	CO	341,520
Denver Department of Human Services	CO	358,560
Denver Department of Human Services	CO	952,680
Denver Department of Human Services	CO	136,224
Family Tree, Inc	CO	80,085
Gospel Shelters for Women dba Liza's Place	CO	25,000

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Grand Valley Catholic Ooutreach. Inc	CO	251,061
Grand Valley Catholic Ooutreach. Inc	CO	99,477
Grand Valley Catholic Ooutreach. Inc	CO	97,151
Grand Valley Catholic Ooutreach. Inc	CO	84,165
Greccio Housing Unlimited, Inc	CO	64,315
Greeley Center for Independence, Inc	CO	30,893
Homeward Pikes Peak	CO	148,615
Housing Solutions for the Southwest	CO	19,008
Larimer Center for Mental Health	CO	54,827
North Range Behavioral Health	CO	109,543
Partners In Housing, Inc	CO	47,998
Partners In Housing, Inc	CO	24,149
Partners In Housing, Inc	CO	88,784
Partners In Housing, Inc	CO	50,710
Partners In Housing, Inc	CO	32,510
Partners In Housing, Inc	CO	81,838
Partners In Housing, Inc	CO	90,330
Pikes Peak United Way	CO	196,776
Posada, Inc	CO	249,900
The Housing Authority City Boulder dba Boulder Housing Partn	CO	274,260
The Housing Authority City Boulder dba Boulder Housing Partn	CO	29,903
The Salvation Army, a California corporation	CO	19,050
The Salvation Army, a California corporation	CO	59,333
The Salvation Army, a California corporation	CO	107,000
Third Way Center, Inc	CO	116,538
Urban Peak Denver	CO	104,160
Volunteers of America Colorado Branch	CO	298,484
Volunteers of America Colorado Branch	CO	514,783
Volunteers of America Colorado Branch	CO	166,245
Alliance for Living, Inc	CT	34,311
Alliance for Living, Inc	CT	34,083
Alliance for Living, Inc	CT	75,678
American Red Cross Middlesex Central CT Chapter	CT	133,000
Applied Behavioral Rehabilitation Institute, Inc	CT	99,878
Association of Religious Communities	CT	63,604
Association of Religious Communities	CT	8,065
Bethsaida Community, Inc	CT	87,528
Bethsaida Community, Inc	CT	86,984
Birmingham Group Health Services, Inc	CT	133,633
Catholic Charities of Fairfield County, Inc	CT	381,026
Catholic Charities of Fairfield County, Inc	CT	202,514
Christian Community Action, Inc	CT	200,025
Chrysalis Center, Inc	CT	211,747
Columbus House, Inc	CT	175,140
Columbus House, Inc	CT	30,902
Columbus House, Inc	CT	189,533
Community Health Resources	CT	107,184
Community Mental Health Affiliates	CT	197,940
Community Renewal Team, Inc	CT	475,913
Community Renewal Team, Inc	CT	576,997
Community Renewal Team, Inc	CT	207,117
Community Renewal Team, Inc	CT	369,918
Connecticut Coalition to End Homelessness	CT	50,000
Connecticut Coalition to End Homelessness	CT	49,999
Connecticut Coalition to End Homelessness	CT	55,860
Connecticut Coalition to End Homelessness	CT	33,089
Connecticut Women's Consortium, Inc	CT	173,249
CREDO Housing Development Corp	CT	56,358
CT Department of Mental Health and Addiction Services	CT	221,676
CT Department of Mental Health and Addiction Services	CT	108,612
CT Department of Mental Health and Addiction Services	CT	182,400
CT Department of Mental Health and Addiction Services	CT	430,752
CT Department of Mental Health and Addiction Services	CT	151,032
CT Department of Mental Health and Addiction Services	CT	543,636
CT Department of Mental Health and Addiction Services	CT	100,887
CT Department of Mental Health and Addiction Services	CT	193,687
CT Department of Mental Health and Addiction Services	CT	144,888
CT Department of Mental Health and Addiction Services	CT	1,818,636
CT Department of Mental Health and Addiction Services	CT	199,920
CT Department of Mental Health and Addiction Services	CT	115,440
CT Department of Mental Health and Addiction Services	CT	72,408
CT Department of Mental Health and Addiction Services	CT	505,008

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
CT Department of Mental Health and Addiction Services	CT	174,720
CT Department of Mental Health and Addiction Services	CT	1,398,228
CT Department of Mental Health and Addiction Services	CT	1,770,336
CT Department of Mental Health and Addiction Services	CT	199,920
CT Department of Mental Health and Addiction Services	CT	416,863
CT Department of Mental Health and Addiction Services	CT	237,344
CT Department of Mental Health and Addiction Services	CT	79,920
CT Department of Mental Health and Addiction Services	CT	242,988
CT Department of Mental Health and Addiction Services	CT	205,800
CT Department of Mental Health and Addiction Services	CT	441,252
CT Department of Mental Health and Addiction Services	CT	54,720
CT Department of Mental Health and Addiction Services	CT	300,300
CT Department of Mental Health and Addiction Services	CT	74,304
CT Department of Mental Health and Addiction Services	CT	367,680
CT Department of Mental Health and Addiction Services	CT	213,379
CT Department of Mental Health and Addiction Services	CT	141,960
CT Department of Mental Health and Addiction Services	CT	207,480
CT Department of Mental Health and Addiction Services	CT	508,704
CT Department of Mental Health and Addiction Services	CT	179,772
CT Department of Mental Health and Addiction Services	CT	270,939
CT Department of Mental Health and Addiction Services	CT	65,520
CT Department of Mental Health and Addiction Services	CT	30,240
CT Department of Mental Health and Addiction Services	CT	211,644
CT Department of Mental Health and Addiction Services	CT	119,616
CT Department of Mental Health and Addiction Services	CT	163,800
CT Department of Mental Health and Addiction Services	CT	116,373
CTE, Inc	CT	132,882
Emerge, Inc	CT	44,890
Family and Children's Agency	CT	146,176
Friendship Service Center of New Britain, Inc	CT	210,007
Friendship Service Center of New Britain, Inc	CT	48,059
Friendship Service Center of New Britain, Inc	CT	48,136
Friendship Service Center of New Britain, Inc	CT	384,203
Hall-Brooke Behavioral Health Services	CT	309,029
Hall-Brooke Behavioral Health Services	CT	938,078
Harbor Health Services, Inc	CT	16,461
Harbor Health Services, Inc	CT	62,084
Holy Family Home and Shelter, Inc	CT	125,631
Housing Authority City of Norwalk	CT	173,880
Housing Authority of City of Torrington	CT	72,408
Housing Authority of City of Torrington	CT	155,160
Housing Authority of the City of Danbury	CT	227,160
Housing Authority of the City of Danbury	CT	151,440
Housing Authority of the City of Waterbury	CT	81,936
Housing Authority of the City of Waterbury	CT	214,824
Housing Authority of the City of Waterbury	CT	245,436
Housing Authority of the City of Waterbury	CT	168,432
Immaculate Conception Shelter & Housing Corporation	CT	602,466
Immaculate Conception Shelter & Housing Corporation	CT	98,000
InterCommunity Inc	CT	224,057
Interfaith Housing Association of Westport/Weston, Inc	CT	49,693
KILLINGLY HOUSING AUTHORITY	CT	44,400
Laurel House, Inc	CT	109,405
Laurel House, Inc	CT	19,703
Liberation Programs, Inc	CT	179,626
Liberty Community Services, Inc	CT	1,049,464
Liberty Community Services, Inc	CT	292,500
Mercy Housing and Shelter Corporation	CT	241,190
Micah Housing, Inc	CT	73,909
Micah Housing, Inc	CT	73,501
Mid Fairfield AIDS Project, Inc	CT	24,700
Mid Fairfield AIDS Project, Inc	CT	24,748
Mid Fairfield AIDS Project, Inc	CT	123,200
Mutual Housing Association of Southwestern Connecticut, Inc	CT	165,900
My Sisters' Place, Inc	CT	249,999
New Opportunities, Inc	CT	374,784
New Opportunities, Inc	CT	39,285
Norwalk Emergency Shelter, Inc	CT	47,830
Operation Hope of Fairfield, Inc	CT	193,914
Operation Hope of Fairfield, Inc	CT	95,855
Pathways, Inc	CT	19,838
Prudence Crandall Center, Inc	CT	184,999

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Prudence Crandall Center, Inc	CT	187,950
Prudence Crandall Center, Inc	CT	147,288
ReFocus Outreach Ministry, Inc	CT	143,220
ReFocus Outreach Ministry, Inc	CT	188,191
Regional Network of Programs, Inc	CT	261,196
Reliance House, Inc	CT	85,024
Shelter for the Homeless, Inc	CT	84,051
South Park Inn, Inc	CT	284,288
St. Luke's Community Services, Inc	CT	19,724
St. Luke's Community Services, Inc	CT	398,715
St. Luke's Community Services, Inc	CT	40,277
St. Philip House, Inc	CT	165,569
St. Vincent DePaul Mission of Bristol, Inc	CT	27,018
St. Vincent DePaul Mission of Bristol, Inc	CT	321,830
St. Vincent DePaul Mission of Waterbury, Inc	CT	293,325
St. Vincent DePaul Place, Middletown, Inc	CT	11,879
St. Vincent DePaul Place, Middletown, Inc	CT	11,894
Thames River Community Service Inc	CT	195,983
The Connection, Inc	CT	137,094
The Salvation Army	CT	73,150
The Thames Valley Council for Community Action, Inc	CT	673,047
Torrington Community Housing Corporation	CT	95,735
United Way of Coastal Fairfield County	CT	39,999
United Way of Coastal Fairfield County	CT	113,654
Windham Regional Community Council	CT	140,145
Windham Regional Community Council	CT	279,758
Women's Center of Southeastern Connecticut, Inc	CT	50,584
Young Women's Christian Association of the Hartford Region	CT	166,666
Youth Continuum	CT	304,160
Catholic Charities of the Archdiocese of Washington DC	DC	432,844
Coalition for the Homeless	DC	171,453
Community Connections, Inc	DC	98,751
Community Connections, Inc	DC	106,863
Community Family Life Services, Inc	DC	140,205
District of Columbia Department of Health HIV/AIDS Administr	DC	327,792
District of Columbia Department of Health HIV/AIDS Administr	DC	247,488
District of Columbia Dept of Human Services	DC	910,908
District of Columbia Dept of Human Services	DC	3,138,528
Families Forward, Inc	DC	234,862
Families Forward, Inc	DC	207,041
Hannah House, Inc	DC	148,115
House of Ruth	DC	114,586
House of Ruth	DC	84,383
House of Ruth	DC	144,083
House of Ruth	DC	321,806
Pathways to Housing DC	DC	514,025
Sasha Bruce Youthwork, Inc	DC	189,057
Sasha Bruce Youthwork, Inc	DC	67,628
Sasha Bruce Youthwork, Inc	DC	129,593
SOME, Inc	DC	101,333
SOME, Inc	DC	513,940
SOME, Inc	DC	323,673
The Community Partnership for the Prevention of Homelessness	DC	121,727
The Community Partnership for the Prevention of Homelessness	DC	275,106
The Community Partnership for the Prevention of Homelessness	DC	123,530
The Community Partnership for the Prevention of Homelessness	DC	592,184
The Community Partnership for the Prevention of Homelessness	DC	239,506
The Community Partnership for the Prevention of Homelessness	DC	188,312
The Community Partnership for the Prevention of Homelessness	DC	285,457
The Community Partnership for the Prevention of Homelessness	DC	86,003
The Community Partnership for the Prevention of Homelessness	DC	350,173
The Community Partnership for the Prevention of Homelessness	DC	204,747
The Community Partnership for the Prevention of Homelessness	DC	931,345
The Community Partnership for the Prevention of Homelessness	DC	143,742
The Community Partnership for the Prevention of Homelessness	DC	141,366
The Community Partnership for the Prevention of Homelessness	DC	132,300
The Community Partnership for the Prevention of Homelessness	DC	109,725
The Community Partnership for the Prevention of Homelessness	DC	110,674
The Community Partnership for the Prevention of Homelessness	DC	899,866
The Community Partnership for the Prevention of Homelessness	DC	141,214
The Community Partnership for the Prevention of Homelessness	DC	149,203
The Community Partnership for the Prevention of Homelessness	DC	148,924

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
The Community Partnership for the Prevention of Homelessness	DC	189,000
The Community Partnership for the Prevention of Homelessness	DC	117,600
The Community Partnership for the Prevention of Homelessness	DC	430,837
The Community Partnership for the Prevention of Homelessness	DC	201,038
The Community Partnership for the Prevention of Homelessness	DC	150,000
The Community Partnership for the Prevention of Homelessness	DC	78,342
The Community Partnership for the Prevention of Homelessness	DC	102,199
The Community Partnership for the Prevention of Homelessness	DC	477,676
The Community Partnership for the Prevention of Homelessness	DC	211,621
The Community Partnership for the Prevention of Homelessness	DC	75,000
The Community Partnership for the Prevention of Homelessness	DC	232,879
The Community Partnership for the Prevention of Homelessness	DC	144,758
The Community Partnership for the Prevention of Homelessness	DC	257,260
The Community Partnership for the Prevention of Homelessness	DC	134,834
The Community Partnership for the Prevention of Homelessness	DC	420,000
The Community Partnership for the Prevention of Homelessness	DC	245,421
The Community Partnership for the Prevention of Homelessness	DC	541,313
The Community Partnership for the Prevention of Homelessness	DC	414,028
The Community Partnership for the Prevention of Homelessness	DC	165,819
The Community Partnership for the Prevention of Homelessness	DC	181,025
The Community Partnership for the Prevention of Homelessness	DC	100,905
The Salvation Army, A Georgia Corporation	DC	475,935
Transitional Housing Corporation	DC	127,720
Connections CSP, Inc	DE	399,128
Connections CSP, Inc	DE	298,324
Connections CSP, Inc	DE	539,231
Connections CSP, Inc	DE	228,512
Connections CSP, Inc	DE	291,161
Connections CSP, Inc	DE	212,970
Connections CSP, Inc	DE	152,421
Connections CSP, Inc	DE	249,240
Connections CSP, Inc	DE	149,429
Delaware	DE	128,049
Delaware	DE	26,596
Homeless Planning Council of Delaware, Inc	DE	95,000
The Ministry of Caring Inc	DE	647,696
The Ministry of Caring Inc	DE	66,467
The Ministry of Caring Inc	DE	145,034
The Ministry of Caring Inc	DE	212,357
The Ministry of Caring Inc	DE	129,874
The Ministry of Caring Inc	DE	45,612
The Ministry of Caring Inc	DE	182,584
The Ministry of Caring Inc	DE	374,174
The Ministry of Caring Inc	DE	200,408
West End Neighborhood House Inc	DE	252,207
YWCA Delaware Inc	DE	323,967
2–1–1 Brevard, Inc	FL	76,751
211 Palm Beach/Treasure Coast	FL	155,077
2–1–1 Tampa Bay Cares, Inc	FL	172,454
88 Ways Youth Organization, Inc	FL	157,359
A.H. of Monroe County, Inc. (AIDS Help)	FL	23,900
Ace Opportunities, Inc	FL	198,380
Adopt-A–Family of the Palm Beaches, Inc	FL	207,038
Adopt-A–Family of the Palm Beaches, Inc	FL	207,811
Adopt-A–Family of the Palm Beaches, Inc	FL	396,503
Agency for Community Treatment Services, Inc. (ACTS)	FL	182,305
Agency for Community Treatment Services, Inc. (ACTS)	FL	114,483
Agency for Community Treatment Services, Inc. (ACTS)	FL	403,035
Agency for Community Treatment Services, Inc. (ACTS)	FL	168,190
Agency for Community Treatment Services, Inc. (ACTS)	FL	50,400
Agency for Community Treatment Services, Inc. (ACTS)	FL	133,334
Agency for Community Treatment Services, Inc. (ACTS)	FL	93,181
Agency for Community Treatment Services, Inc. (ACTS)	FL	367,604
Agency for Community Treatment Services, Inc. (ACTS)	FL	171,597
Aid to Victims of Domestic Abuse, Inc	FL	106,540
Alachua County Housing Authority	FL	80,569
Alachua County Housing Authority	FL	78,720
Alachua County Housing Authority	FL	136,500
Alpha House of Pinellas County	FL	69,888
Alpha House of Tampa, Inc	FL	68,819
Alpha House of Tampa, Inc	FL	83,013
Alpha House of Tampa, Inc	FL	77,219

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Another Way, Inc	FL	70,325
Big Bend Homeless Coalition, Inc	FL	76,231
Big Bend Homeless Coalition, Inc	FL	345,538
Big Bend Homeless Coalition, Inc	FL	311,104
Big Bend Homeless Coalition, Inc	FL	270,463
Boley Centers, Inc	FL	142,143
Boley Centers, Inc	FL	66,528
Boley Centers, Inc	FL	263,943
Boley Centers, Inc	FL	133,928
Boley Centers, Inc	FL	253,778
Boley Centers, Inc	FL	356,438
Boley Centers, Inc	FL	77,362
Boley Centers, Inc	FL	82,554
Boley Centers, Inc	FL	190,080
Boley Centers, Inc	FL	484,704
Boley Centers, Inc	FL	581,560
Bridgeway Center, Inc	FL	327,898
Bridgeway Center, Inc	FL	33,167
Bridgeway Center, Inc	FL	197,249
Brookwood Florida-Central, Inc	FL	98,430
Broward County Board of County Commissioners	FL	949,272
Broward County Board of County Commissioners	FL	275,424
Broward County Board of County Commissioners	FL	246,891
Broward County Board of County Commissioners	FL	346,049
Broward County Board of County Commissioners	FL	421,488
Broward County Board of County Commissioners	FL	316,500
Broward County Board of County Commissioners	FL	964,262
Broward County Board of County Commissioners	FL	245,237
Broward County Board of County Commissioners	FL	288,229
Broward County Board of County Commissioners	FL	1,229,688
Broward County Board of County Commissioners	FL	388,548
Broward County Board of County Commissioners	FL	284,042
Broward County Board of County Commissioners	FL	948,025
Broward County Board of County Commissioners	FL	128,280
Broward County Housing Authority	FL	1,403,892
Carrfour Supportive Housing	FL	409,479
Catholic Charities Diocese of St. Petersburg	FL	189,928
Catholic Charities of the Archdiocese of Miami, Inc	FL	172,516
Catholic Charities, Diocese of Venice, Inc	FL	79,166
Catholic Charities, Diocese of Venice, Inc	FL	120,137
Charlotte County Homeless Coalition, Inc	FL	40,333
Charlotte County Homeless Coalition, Inc	FL	49,395
Charlotte County Homeless Coalition, Inc	FL	26,707
Children's Home Society of Florida	FL	129,156
City of Bradenton	FL	168,396
City of Gainesville	FL	105,098
City of Gainesville	FL	98,849
Clara White Mission, Inc	FL	132,038
Coalition for the Homeless of Pasco County, Inc	FL	13,856
Coalition for the Homeless of Pasco County, Inc	FL	19,950
Coalition For The Hungry and Homeless of Brevard County, Inc	FL	4,810
Coalition For The Hungry and Homeless of Brevard County, Inc	FL	151,788
Coalition For The Hungry and Homeless of Brevard County, Inc	FL	171,054
Coalition For The Hungry and Homeless of Brevard County, Inc	FL	137,327
Coalition For The Hungry and Homeless of Brevard County, Inc	FL	230,453
Collier County Board of County Commissioners	FL	81,840
Collier County Board of County Commissioners	FL	113,000
Collier County Board of County Commissioners	FL	104,645
Collier County Board of County Commissioners	FL	113,116
Community Action Stops Abuse, Inc	FL	241,031
Community Connections of Jacksonville, Inc	FL	250,859
Community Connections of Jacksonville, Inc	FL	532,794
Community Connections of Jacksonville, Inc	FL	162,380
Community Connections of Jacksonville, Inc	FL	228,950
Community Enterprise Investments Inc	FL	142,499
Covenant House Florida, Inc	FL	185,329
Crosswinds Youth Services, Inc	FL	88,088
Domestic Abuse Council, Inc	FL	62,815
Domestic Abuse Council, Inc	FL	125,488
Domestic Abuse Council, Inc	FL	70,498
Emergency Services & Homeless Coalition of St. Johns Co.,	FL	62,790
Emergency Services & Homeless Coalition of St. Johns Co.,	FL	89,610

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Emergency Services and Homeless Coalition of Jacksonville	FL	64,374
Emergency Services and Homeless Coalition of Jacksonville	FL	75,042
Emergency Services and Homeless Coalition of Jacksonville	FL	463,275
Escarosa Coalition on the Homeless, Inc	FL	18,892
Escarosa Coalition on the Homeless, Inc	FL	108,273
Family Renew Community, Inc	FL	52,980
Family Renew Community, Inc	FL	19,045
Flagler Ecumenical Social Service Center, Inc	FL	73,167
Florida Keys Outreach Coalition, Inc	FL	175,879
Gainesville Housing Authority	FL	144,876
Gainesville Housing Authority	FL	88,992
Gateway Community Services, Inc	FL	61,705
Gateway Community Services, Inc	FL	54,727
Goodwill of North Florida	FL	284,588
Gulfstream Goodwill Industries, Inc	FL	134,036
Gulfstream Goodwill Industries, Inc	FL	990,218
Haven Recovery Center Inc	FL	60,249
Haven Recovery Center Inc	FL	23,012
Haven Recovery Center Inc	FL	171,920
Haven Recovery Center Inc	FL	45,858
Haven Recovery Center Inc	FL	129,273
Haven Recovery Center Inc	FL	138,422
Haven Recovery Center Inc	FL	191,250
Homeless and Hunger Coalition of Northwest Florida, Inc	FL	45,222
Homeless Coalition of Hillsborough County, Inc	FL	278,843
Homeless Coalition of Hillsborough County, Inc	FL	499,745
Homeless Coalition of Hillsborough County, Inc	FL	44,191
Homeless Coalition of Polk, Inc	FL	116,531
Homeless Emergency Project, Inc	FL	33,101
Homeless Emergency Project, Inc	FL	71,000
Homeless Emergency Project, Inc	FL	57,953
Homeless Services Network of Central Florida, Inc	FL	283,455
Homeless Services Network of Central Florida, Inc	FL	118,324
Homeless Services Network of Central Florida, Inc	FL	121,949
Homeless Services Network of Central Florida, Inc	FL	52,500
Homeless Services Network of Central Florida, Inc	FL	98,043
Homeless Services Network of Central Florida, Inc	FL	136,832
Homeless Services Network of Central Florida, Inc	FL	123,134
Homeless Services Network of Central Florida, Inc	FL	37,203
Homeless Services Network of Central Florida, Inc	FL	84,630
Homeless Services Network of Central Florida, Inc	FL	92,302
Homeless Services Network of Central Florida, Inc	FL	123,553
Homeless Services Network of Central Florida, Inc	FL	48,999
Homeless Services Network of Central Florida, Inc	FL	175,988
Homeless Services Network of Central Florida, Inc	FL	219,009
Homeless Services Network of Central Florida, Inc	FL	269,745
Homeless Services Network of Central Florida, Inc	FL	78,352
Homeless Services Network of Central Florida, Inc	FL	118,542
Homeless Services Network of Central Florida, Inc	FL	124,388
Homeless Services Network of Central Florida, Inc	FL	42,105
Homeless Services Network of Central Florida, Inc	FL	363,480
Homeless Services Network of Central Florida, Inc	FL	168,345
Homeless Services Network of Central Florida, Inc	FL	127,839
Homeless Services Network of Central Florida, Inc	FL	96,448
Homeless Services Network of Central Florida, Inc	FL	181,989
Homeless Services Network of Central Florida, Inc	FL	61,950
Homeless Services Network of Central Florida, Inc	FL	156,661
Homeless Services Network of Central Florida, Inc	FL	51,747
Homeless Services Network of Central Florida, Inc	FL	81,885
Homeless Services Network of Central Florida, Inc	FL	94,852
Homeless Services Network of Central Florida, Inc	FL	210,000
HOPE Family Services, Inc	FL	25,862
HOPE Family Services, Inc	FL	67,680
Housing Authority of the City of Tampa	FL	181,032
Housing Authority of the City of Tampa	FL	174,144
Housing Authority of the City of Tampa	FL	190,080
Housing Partnership, Inc	FL	62,587
I.M. Sulzbacher Center for the Homeless, Inc	FL	237,169
I.M. Sulzbacher Center for the Homeless, Inc	FL	157,460
Indian River County Board of County Commissioners	FL	344,160
Indian River County Board of County Commissioners	FL	117,000
Indian River County Board of County Commissioners	FL	99,000

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Indian River County Board of County Commissioners	FL	171,000
Indian River County Board of County Commissioners	FL	70,063
Indian River County Board of County Commissioners	FL	25,856
Indian River County Board of County Commissioners	FL	36,177
Indian River County Board of County Commissioners	FL	76,944
Jacksonville Housing Authority	FL	205,656
Lakeview Center Incorporated	FL	158,701
Lakeview Center Incorporated	FL	307,887
Lakeview Center Incorporated	FL	105,777
Lee County Board of County Commissioners	FL	119,722
Lee County Board of County Commissioners	FL	1,286,206
Lee County Board of County Commissioners	FL	89,668
Lee County Board of County Commissioners	FL	32,777
Lee County Board of County Commissioners	FL	111,000
Lee County Board of County Commissioners	FL	122,604
Lee County Board of County Commissioners	FL	180,510
Lee County Board of County Commissioners	FL	13,125
Lee County Board of County Commissioners	FL	82,140
Lee County Board of County Commissioners	FL	52,978
Lee County Board of County Commissioners	FL	76,008
Loaves and Fishes Soup Kitchen, Inc	FL	248,672
Marion County Homeless Council, Inc	FL	62,160
Martin County Board of County Commissioners	FL	109,488
Martin County Board of County Commissioners	FL	107,064
Martin County Board of County Commissioners	FL	99,792
Mental Health Care Inc	FL	295,333
Mental Health Care Inc	FL	199,500
Mental Health Care Inc	FL	839,791
Mental Health Resource Center, Inc	FL	252,317
Miami-Dade County	FL	118,393
Miami-Dade County	FL	85,677
Miami-Dade County	FL	279,504
Miami-Dade County	FL	336,002
Miami-Dade County	FL	434,726
Miami-Dade County	FL	620,640
Miami-Dade County	FL	251,071
Miami-Dade County	FL	84,000
Miami-Dade County	FL	580,020
Miami-Dade County	FL	357,790
Miami-Dade County	FL	151,582
Miami-Dade County	FL	106,992
Miami-Dade County	FL	668,088
Miami-Dade County	FL	852,655
Miami-Dade County	FL	219,943
Miami-Dade County	FL	321,509
Miami-Dade County	FL	40,533
Miami-Dade County	FL	217,060
Miami-Dade County	FL	376,666
Miami-Dade County	FL	154,980
Miami-Dade County	FL	158,448
Miami-Dade County	FL	63,993
Miami-Dade County	FL	1,310,616
Miami-Dade County	FL	177,066
Miami-Dade County	FL	313,121
Miami-Dade County	FL	348,234
Miami-Dade County	FL	231,504
Miami-Dade County	FL	57,668
Miami-Dade County	FL	363,478
Miami-Dade County	FL	311,678
Miami-Dade County	FL	199,224
Miami-Dade County	FL	124,621
Miami-Dade County	FL	129,138
Miami-Dade County	FL	737,089
Miami-Dade County	FL	292,800
Miami-Dade County	FL	687,505
Miami-Dade County	FL	174,998
Miami-Dade County	FL	712,327
Miami-Dade County	FL	149,891
Miami-Dade County	FL	923,833
Miami-Dade County	FL	534,832
Miami-Dade County	FL	351,360
Miami-Dade County	FL	158,095

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Miami-Dade County	FL	304,512
Miami-Dade County	FL	443,376
Miami-Dade County	FL	433,344
Miami-Dade County	FL	270,288
Miami-Dade County	FL	568,920
Miami-Dade County	FL	879,311
Miami-Dade County	FL	775,406
Miami-Dade County	FL	178,171
Miami-Dade County	FL	162,929
Miami-Dade County	FL	389,996
Miami-Dade County	FL	192,664
Miami-Dade County	FL	425,391
Miami-Dade County	FL	234,240
Miami-Dade County	FL	33,957
Miami-Dade County	FL	356,160
Miami-Dade County	FL	117,120
Miami-Dade County	FL	46,964
Miami-Dade County	FL	347,128
Miami-Dade County	FL	714,079
Miami-Dade County	FL	53,112
Miami-Dade County	FL	892,989
Miami-Dade County	FL	339,721
Miami-Dade County	FL	150,685
Miami-Dade County	FL	108,612
Miami-Dade County	FL	273,807
Miami-Dade County	FL	296,020
Miami-Dade County	FL	113,661
Miami-Dade County	FL	292,660
Miami-Dade County	FL	227,568
Miami-Dade County	FL	138,789
Miami-Dade County	FL	215,001
Miami-Dade County	FL	796,488
Miami-Dade County	FL	394,999
Miami-Dade County	FL	262,174
Miami-Dade County	FL	124,996
Miami-Dade County	FL	467,304
Miami-Dade County	FL	125,000
Miami-Dade County	FL	79,479
Miami-Dade County	FL	494,016
Miami-Dade County	FL	34,188
Miami-Dade County	FL	528,062
Miami-Dade County	FL	12,075
Miami-Dade County	FL	348,014
Miami-Dade County	FL	169,798
Mid Florida Homeless Coalition, Inc	FL	78,143
Monroe Association for Retarded Citizens, Inc	FL	102,268
Oakwood Center of The Palm Beaches, Inc	FL	132,255
Oakwood Center of The Palm Beaches, Inc	FL	137,615
Oakwood Center of The Palm Beaches, Inc	FL	386,104
Okaloosa Walton Homeless Continuum of Care/Opportunity, Inc	FL	61,853
Operation PAR, Inc	FL	100,452
Orange County Housing and Community Development Division	FL	134,940
Orange County Housing and Community Development Division	FL	259,500
Osceola County Government	FL	554,760
Palm Beach County Board of County Commissioners	FL	442,158
Palm Beach County Board of County Commissioners	FL	199,080
Palm Beach County Board of County Commissioners	FL	225,624
Pasco County Housing Authority	FL	105,000
Peace River Center for Personal Development Inc	FL	99,574
Peace River Center for Personal Development Inc	FL	184,688
Peaceful Paths Domestic Abuse Network, Inc	FL	84,974
Presbyterian Social Ministries Inc	FL	124,981
Project Return, Inc	FL	153,956
Punta Gorda Housing Authority	FL	110,448
Religious Community Services, Inc	FL	110,054
River Region Human Services, Inc	FL	140,025
River Region Human Services, Inc	FL	258,775
Seminole County Government	FL	249,120
SMA Behavioral Health Services, Inc	FL	45,198
St. Lucie County Board of County Commissioners	FL	145,752
Suncoast Partnership to End Homelessness, Inc	FL	37,698
Suncoast Partnership to End Homelessness, Inc	FL	37,993

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Talbot House Ministries of Lakeland, Inc	FL	255,925
Talbot House Ministries of Lakeland, Inc	FL	47,374
The Lord's Place, Inc	FL	131,171
The Lord's Place, Inc	FL	182,984
The Lord's Place, Inc	FL	283,023
The Salvation Army a Georgia Corporation	FL	603,641
The Salvation Army, a GA Corp, for The Salvation Army, Tampa	FL	144,467
The Salvation Army, a GA Corp, for The Salvation Army, Tampa	FL	244,745
The Salvation Army, a Georgia Corporation	FL	107,625
The Salvation Army, a Georgia Corporation	FL	71,045
The Salvation Army, a Georgia Corporation	FL	127,780
The Salvation Army, a Georgia Corporation for the Salvation	FL	233,735
The Salvation Army, A Georgia Corporation, for The Salvation	FL	170,432
The Spring of Tampa Bay, Inc	FL	177,557
The Wilson House, Inc	FL	96,337
Tri-County Human Services, Inc	FL	76,052
Tri-County Human Services, Inc	FL	96,337
Tri-County Human Services, Inc	FL	253,688
Tri-County Human Services, Inc	FL	76,199
United Way of Suwannee Valley	FL	32,146
Volunteers of America of Florida, Inc	FL	217,549
Volunteers of America of Florida, Inc	FL	125,789
Volunteers of America of Florida, Inc	FL	344,110
Volunteers of America of Florida, Inc	FL	382,628
Volunteers of America of Florida, Inc	FL	698,113
Volunteers of America of Florida, Inc	FL	354,510
Volunteers of America of Florida, Inc	FL	358,313
Volusia/Flagler County Coalition for the Homeless	FL	85,286
Volusia/Flagler County Coalition for the Homeless	FL	54,566
WestCare GulfCoast-Florida, Inc	FL	273,000
Young Women's Christian Association of Tampa Bay, Inc	FL	176,237
YWCA of Palm Beach County, FL	FL	229,547
24/7 Gateway, LLC	GA	157,728
Action Ministries, Inc	GA	486,342
Action Ministries, Inc	GA	244,587
Action Ministries, Inc	GA	70,014
Advantage Behavioral Health Systems	GA	167,095
Asian American Resource Foundation, Inc	GA	157,408
Atlanta Center for Self Sufficiency, Inc	GA	60,344
Augusta, Georgia	GA	181,027
Augusta, Georgia	GA	34,545
Buckhead Christian Ministry	GA	82,800
Calvary Refuge, Inc	GA	203,326
Chatham-Savannah Authority for the Homeless	GA	223,661
Chatham-Savannah Authority for the Homeless	GA	179,256
Citizens Against Violence, Inc	GA	265,464
City of Albany	GA	116,217
City of Hinesville	GA	64,929
City of Savannah	GA	291,048
City of Savannah	GA	275,640
Cobb Community Collaborative, Inc	GA	30,000
Cobb County Community Services Board	GA	35,000
Colquitt County Serenity House Project, Inc	GA	198,902
Community Advanced Practice Nurses, Inc	GA	18,517
Community Advanced Practice Nurses, Inc	GA	46,423
Community Advanced Practice Nurses, Inc	GA	39,039
Crossroads Community Ministries, Inc	GA	314,228
CSRA Economic Opportunity Authority, Inc	GA	122,198
Dalton-Whitfield Community Development Corporation	GA	31,058
Douglas County Community Services Board	GA	105,639
Economic Opportunity Authority for Savannah-Chatham County	GA	220,500
Families First, Inc	GA	172,492
Fulton County Board of Commissioners	GA	211,368
Fulton County Board of Commissioners	GA	300,000
Fulton County Board of Commissioners	GA	686,487
Fulton County Board of Commissioners	GA	373,951
Furniture Bank of Metro Atlanta, Inc	GA	70,009
Gateway Behavioral Health Services	GA	350,406
Genesis Shelter, Inc	GA	136,500
Georgia Law Center on Homelessness & Poverty Inc	GA	295,200
Georgia Coalition Against Domestic Violence	GA	342,584
Georgia Coalition Against Domestic Violence	GA	91,072

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Georgia Housing and Finance Authority	GA	276,984
Georgia Housing and Finance Authority	GA	216,024
Georgia Housing and Finance Authority	GA	96,936
Georgia Housing and Finance Authority	GA	291,780
Georgia Housing and Finance Authority	GA	166,908
Georgia Housing and Finance Authority	GA	517,128
Georgia Housing and Finance Authority	GA	163,056
Georgia Housing and Finance Authority	GA	124,788
Georgia Housing and Finance Authority	GA	185,760
Georgia Housing and Finance Authority	GA	104,760
Georgia Housing and Finance Authority	GA	74,364
Georgia Housing and Finance Authority	GA	108,696
Georgia Housing and Finance Authority	GA	1,167,900
Georgia Housing and Finance Authority	GA	198,288
Georgia Housing and Finance Authority	GA	588,000
Georgia Housing and Finance Authority	GA	330,540
Georgia Housing and Finance Authority	GA	169,560
Georgia Housing and Finance Authority	GA	296,556
Georgia Housing and Finance Authority	GA	145,656
Georgia Housing and Finance Authority	GA	328,800
Georgia Housing and Finance Authority	GA	342,348
Georgia Housing and Finance Authority	GA	145,440
Georgia Housing and Finance Authority	GA	234,360
Georgia Housing and Finance Authority	GA	63,000
Georgia Housing and Finance Authority	GA	32,520
Georgia Housing and Finance Authority	GA	190,224
Georgia Housing and Finance Authority	GA	457,080
Georgia Housing and Finance Authority	GA	233,700
Georgia Housing and Finance Authority	GA	82,248
Georgia Housing and Finance Authority	GA	118,368
Georgia Housing and Finance Authority	GA	148,284
Georgia Housing and Finance Authority	GA	170,040
Georgia Housing and Finance Authority	GA	150,876
Georgia Housing and Finance Authority	GA	245,616
Georgia Housing and Finance Authority	GA	282,864
Georgia Housing and Finance Authority	GA	175,440
Georgia Housing and Finance Authority	GA	189,264
Georgia Housing and Finance Authority	GA	497,160
Georgia Housing and Finance Authority	GA	76,296
Georgia Housing and Finance Authority	GA	86,304
Georgia Housing and Finance Authority	GA	478,836
Georgia Housing and Finance Authority	GA	31,008
Georgia Housing and Finance Authority	GA	274,884
Georgia Housing and Finance Authority	GA	209,832
Goodwill Industries of Middle Georgia, Inc	GA	89,761
Goodwill Industries of Middle Georgia, Inc	GA	110,310
Goodwill Industries of Middle Georgia, Inc	GA	148,066
Greenbriar Children's Center, Inc	GA	398,424
Gwinnett Housing Resource Partnership, Inc. dba: The IMPACT	GA	183,928
Gwinnett Housing Resource Partnership, Inc. dba: The IMPACT	GA	146,895
Gwinnett Housing Resource Partnership, Inc. dba: The IMPACT	GA	73,447
Hodac, Inc	GA	42,891
Hope House, Inc	GA	58,842
House of Dawn, Inc	GA	123,060
House of TIME, Inc	GA	347,079
Housing Authority of Savannah	GA	1,119,720
Housing Initiative of North Fulton	GA	23,632
Initiative for Affordable Housing, Inc	GA	321,418
Jerusalem House, Inc	GA	193,704
Loaves & Fishes Ministry of Macon, Inc	GA	23,230
Loaves & Fishes Ministry of Macon, Inc	GA	74,199
Lowndes Associated Ministries to People, Inc	GA	140,571
Lowndes Associated Ministries to People, Inc	GA	145,917
Macon-Bibb County Economic Opportunity Council, Inc	GA	94,500
Macon-Bibb County Economic Opportunity Council, Inc	GA	99,750
Maranatha Outreach, Inc	GA	60,178
Marietta Housing Authority	GA	121,680
Marietta Housing Authority	GA	228,096
Mary Hall Freedom House, Inc	GA	557,830
Mary Hall Freedom House, Inc	GA	287,254
Mary Hall Freedom House, Inc	GA	292,265
Ministries United for Service and Training	GA	35,000

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Ministries United for Service and Training	GA	35,280
Ministries United for Service and Training	GA	70,560
New Horizons Community Service Board	GA	45,122
Open Door Community House, Inc	GA	267,745
Our House, Inc	GA	47,235
Progressive Redevelopment, Inc	GA	44,090
Progressive Redevelopment, Inc	GA	563,245
Quest 35, Inc	GA	504,000
Rainbow Village, Inc	GA	226,295
S.H.A.R.E. House, Inc	GA	128,396
Saint Joseph's Mercy Care Services, Inc	GA	36,823
South Georgia Coalition to End Homelessness	GA	248,500
Southwest Georgia Housing Development Corporation	GA	185,868
Southwest Georgia Housing Development Corporation	GA	477,149
St. Jude's Recovery Center, Inc	GA	278,342
St. Jude's Recovery Center, Inc	GA	737,988
Stewart Community Home, Inc	GA	285,619
The Center for Family Resources	GA	96,700
The Center for Family Resources	GA	450,489
The Center for Family Resources	GA	85,323
The Center for Family Resources	GA	194,061
The Extension, Inc	GA	104,654
The Salvation Army	GA	517,484
Travelers Aid of Metropolitan Atlanta, Inc	GA	367,317
Travelers Aid of Metropolitan Atlanta, Inc	GA	56,378
Travelers Aid of Metropolitan Atlanta, Inc	GA	156,541
Travelers Aid of Metropolitan Atlanta, Inc	GA	56,556
Trinity Community Ministries	GA	108,917
Unified Government of Athens-Clarke County	GA	105,991
Unified Government of Athens-Clarke County	GA	77,068
Unified Government of Athens-Clarke County	GA	28,080
Unified Government of Athens-Clarke County	GA	58,176
Unified Government of Athens-Clarke County	GA	26,712
Unified Government of Athens-Clarke County	GA	56,834
Union Mission, Inc	GA	166,436
Union Mission, Inc	GA	169,381
Union Mission, Inc	GA	218,875
YWCA of Northwest Georgia	GA	173,053
Zion Keepers, Inc	GA	50,693
Government of Guam/Guam Housing & Urban Renewal Authority	GU	125,415
Government of Guam/Guam Housing & Urban Renewal Authority	GU	164,796
Government of Guam/Guam Housing & Urban Renewal Authority	GU	79,082
Government of Guam/Guam Housing & Urban Renewal Authority	GU	313,363
Government of Guam/Guam Housing & Urban Renewal Authority	GU	28,224
Government of Guam/Guam Housing & Urban Renewal Authority	GU	60,019
Government of Guam/Guam Housing & Urban Renewal Authority	GU	71,600
Government of Guam/Guam Housing & Urban Renewal Authority	GU	175,392
Alternative Structures International	HI	147,175
Child and Family Service	HI	84,488
City and County of Honolulu	HI	1,258,848
City and County of Honolulu	HI	185,147
City and County of Honolulu	HI	453,120
City and County of Honolulu	HI	1,980,792
City and County of Honolulu	HI	1,586,712
City and County of Honolulu	HI	133,607
City and County of Honolulu	HI	68,000
Gregory House Programs	HI	363,080
Hale Kipa, Inc	HI	136,000
Hawaii Department of Human Services	HI	483,168
Hawaii Department of Human Services	HI	478,248
Hawaii Department of Human Services	HI	41,160
Hawaii Department of Human Services	HI	77,536
Hawaii Department of Human Services	HI	31,131
Hawaii Department of Human Services	HI	166,920
Hawaii Department of Human Services	HI	83,460
Hawaii Department of Human Services	HI	42,288
Hawaii Department of Human Services	HI	650,988
Housing Solutions Incorporated	HI	55,132
Legal Aid Society of Hawaii	HI	64,669
Maui Economic Concerns of the Community, Inc	HI	91,717
Maui Economic Concerns of the Community, Inc	HI	46,245
Mental Health Kokua	HI	876,273

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Ruthann Quitiquit	HI	29,015
Steadfast Housing Development Corporation	HI	31,598
Steadfast Housing Development Corporation	HI	32,924
Steadfast Housing Development Corporation	HI	36,960
Steadfast Housing Development Corporation	HI	207,198
Steadfast Housing Development Corporation	HI	27,874
Steadfast Housing Development Corporation	HI	29,653
Steadfast Housing Development Corporation	HI	36,384
Steadfast Housing Development Corporation	HI	33,384
The Salvation Army	HI	289,302
The Salvation Army	HI	183,498
United States Veterans Initiative, Inc	HI	142,282
United States Veterans Initiative, Inc	HI	341,263
Area Substance Abuse Council, dba. New Directions	IA	104,223
Cedar Valley Friends of the Family	IA	256,767
Cedar Valley Friends of the Family	IA	571,577
Center For Siouxland	IA	131,922
Center For Siouxland	IA	128,168
City of Des Moines	IA	248,640
City of Des Moines	IA	827,940
City of Des Moines	IA	288,266
City of Des Moines	IA	181,800
City of Des Moines	IA	99,390
City of Des Moines	IA	30,265
City of Des Moines	IA	227,468
City of Des Moines	IA	110,250
City of Des Moines	IA	289,732
City of Des Moines	IA	85,000
City of Des Moines	IA	76,136
City of Des Moines	IA	254,520
City of Des Moines	IA	256,108
City of Sioux City	IA	113,452
Community Action Agency of Siouxland	IA	137,239
Community Corrections Improvement Association	IA	72,187
Community Housing Initiatives, Inc	IA	380,865
Community Housing Initiatives, Inc	IA	136,201
Crisis Intervention & Advocacy Center	IA	158,918
Crisis Intervention Services	IA	36,166
Crittenton Center	IA	184,527
Crittenton Center	IA	108,759
Family Resources, Inc	IA	39,525
Family Resources, Inc	IA	38,946
Hawkeye Area Community Action Program, Inc	IA	26,749
Hawkeye Area Community Action Program, Inc	IA	213,827
Hawkeye Area Community Action Program, Inc	IA	466,174
Hillcrest Family Services	IA	71,538
Humility of Mary Housing, Inc	IA	37,549
Humility of Mary Shelter, Inc	IA	492,000
Humility of Mary Shelter, Inc	IA	220,000
Humility of Mary Shelter, Inc	IA	155,000
Humility of Mary Shelter, Inc	IA	68,880
Iowa Finance Authority	IA	107,100
Iowa Institute for Community Alliances	IA	29,749
Iowa Institute for Community Alliances	IA	252,979
Manasseh House	IA	78,828
Opening Doors	IA	42,221
Project Concern, Inc	IA	31,570
Shelter House Community Shelter and Transition Services	IA	448,318
The Salvation Army	IA	148,666
Youth and Shelter Services, Inc	IA	129,733
Youth and Shelter Services, Inc	IA	191,096
YWCA Clinton	IA	49,232
Ada County Housing Authority	ID	170,376
Ada County Housing Authority	ID	541,169
Boise City Housing Authority	ID	64,514
Boise City Housing Authority	ID	18,410
Boise City Housing Authority	ID	7,696
Idaho Housing and Finance Association	ID	116,378
Idaho Housing and Finance Association	ID	30,444
Idaho Housing and Finance Association	ID	55,840
Idaho Housing and Finance Association	ID	187,929
Idaho Housing and Finance Association	ID	81,539

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Idaho Housing and Finance Association	ID	313,056
Idaho Housing and Finance Association	ID	75,967
Idaho Housing and Finance Association	ID	102,930
Idaho Housing and Finance Association	ID	154,350
Idaho Housing and Finance Association	ID	79,539
Idaho Housing and Finance Association	ID	46,597
Idaho Housing and Finance Association	ID	81,435
Idaho Housing and Finance Association	ID	96,302
Idaho Housing and Finance Association	ID	41,576
Idaho Housing and Finance Association	ID	44,208
Idaho Housing and Finance Association	ID	74,088
Idaho Housing and Finance Association	ID	67,692
Idaho Housing and Finance Association	ID	131,250
Idaho Housing and Finance Association	ID	49,488
Idaho Housing and Finance Association	ID	116,235
Idaho Housing and Finance Association	ID	73,596
Idaho Housing and Finance Association	ID	57,308
Idaho Housing and Finance Association	ID	63,649
Idaho Housing and Finance Association	ID	69,050
Idaho Housing and Finance Association	ID	66,402
Idaho Housing and Finance Association	ID	51,888
Idaho Housing and Finance Association	ID	75,412
Idaho Housing and Finance Association	ID	193,120
Idaho Housing and Finance Association	ID	81,735
Idaho Housing and Finance Association	ID	30,135
Idaho Housing and Finance Association	ID	24,436
Idaho Housing and Finance Association	ID	112,656
Supportive Housing and Innovative Partnerships, Inc	ID	39,405
Women's and Children's Alliance	ID	113,450
Abundant Faith Ministry	IL	20,090
Abundant Faith Ministry	IL	13,738
Affordable Housing Preservation Foundation 51st Street Y	IL	77,553
AIDS Foundation of Chicago	IL	1,269,792
AIDS Foundation of Chicago	IL	336,539
AIDS Foundation of Chicago	IL	2,140,276
AIDS Foundation of Chicago	IL	994,996
Alexian Brothers Bonaventure House	IL	136,533
Alliance to End Homelessness in Suburban Cook County	IL	227,684
Ambassadors For Christ	IL	38,616
Anna Bixby Women's Center	IL	143,657
Anna Bixby Women's Center	IL	114,539
Anna Bixby Women's Center	IL	77,105
Apna Ghar, Inc	IL	123,087
B.C.M.W. Community Services Inc	IL	19,597
Beacon Therapeutic School, Inc	IL	983,922
Bethany for Children & Families	IL	361,484
Bethany Place	IL	48,641
Bethany Place	IL	51,955
Bethel Human Resources Corp	IL	184,231
BREAKTHROUGH URBAN MINISTRIES, INC	IL	151,775
BREAKTHROUGH URBAN MINISTRIES, INC	IL	139,650
BREAKTHROUGH URBAN MINISTRIES, INC	IL	45,360
Bridge Communities, Inc	IL	111,376
C.E.F.S. Economic Opportunity Corporation	IL	199,675
C.E.F.S. Economic Opportunity Corporation	IL	133,350
Call For Help, Inc	IL	527,382
Carver Community Action Agency	IL	104,141
Casa Central Social Services Corporation	IL	434,437
Casa Central Social Services Corporation	IL	383,904
Catholic Charities of the Archdiocese of Chicago	IL	187,128
Catholic Charities of the Archdiocese of Chicago	IL	731,105
Catholic Charities of the Archdiocese of Chicago	IL	140,000
Catholic Charities of the Archdiocese of Chicago	IL	1,693,872
Catholic Charities of the Archdiocese of Chicago	IL	194,713
Catholic Charities of the Archdiocese of Chicago	IL	107,100
Catholic Charities of the Archdiocese of Chicago	IL	89,379
Catholic Charities, Diocese of Joliet	IL	842,965
Catholic Charities, Diocese of Joliet	IL	197,038
Catholic Charities, Diocese of Joliet	IL	754,500
Catholic Charities, Diocese of Joliet	IL	122,586
Catholic Charities, Diocese of Joliet	IL	216,230
Catholic Charities, Diocese of Joliet	IL	417,484

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
CDBG Operations Corporation	IL	96,687
CDBG Operations Corporation	IL	344,907
CDBG Operations Corporation	IL	86,486
CEDA Bloom-Rich	IL	231,678
CEDA NORTHWEST SELF-HELP CENTER, Inc	IL	162,947
CEDA NORTHWEST SELF-HELP CENTER, Inc	IL	144,873
Champaign County Regional Planning Commission	IL	337,944
Champaign County Regional Planning Commission	IL	6,231
Chestnut Health Systems	IL	133,052
Chestnut Health Systems	IL	135,483
Chestnut Health Systems, Inc	IL	269,203
Chestnut Health Systems, Inc	IL	283,300
Chestnut Health Systems, Inc	IL	575,674
Chestnut Health Systems, Inc	IL	181,544
Chestnut Health Systems, Inc	IL	104,922
Chicago Christian Industrial League	IL	329,711
Chicago Christian Industrial League	IL	344,365
Chicago Christian Industrial League	IL	212,378
Chicago Christian Industrial League	IL	52,447
Chicago Christian Industrial League	IL	87,284
Chicago House and Social Service Agency	IL	40,639
Chicago Low-Income Housing Trust Fund	IL	178,145
Children's Home + Aid	IL	38,650
Christian Community Health Center	IL	2,127,900
Christian Community Health Center	IL	191,489
Christian Family Ministries	IL	33,250
City of Bloomington	IL	23,082
City of Bloomington	IL	139,046
City of Bloomington	IL	130,914
City of Bloomington	IL	31,260
City of Bloomington	IL	19,367
City of Bloomington	IL	5,217
City of Chicago	IL	249,636
City of Chicago	IL	318,498
City of Chicago	IL	474,000
City of Chicago	IL	213,480
City of Chicago	IL	692,040
City of Chicago	IL	281,856
City of Chicago	IL	473,832
City of Chicago	IL	112,512
City of Chicago	IL	260,724
City of Chicago	IL	474,000
City of Chicago	IL	331,800
City of Chicago	IL	304,944
City of Chicago	IL	415,188
City of Chicago	IL	142,200
City of Chicago	IL	379,680
City of Chicago	IL	534,816
City of Chicago	IL	284,400
City of Chicago	IL	348,192
City of Chicago	IL	44,712
City of Chicago	IL	771,144
City of Chicago	IL	419,016
City of Chicago	IL	284,400
City of Chicago	IL	108,480
City of Chicago	IL	275,064
City of Chicago	IL	47,400
City of Chicago	IL	362,496
City of Chicago	IL	686,664
City of Chicago	IL	627,480
City of Chicago	IL	426,960
City of Chicago	IL	503,196
City of Chicago	IL	284,400
City of Chicago	IL	284,400
City of Chicago	IL	455,040
City of Chicago	IL	270,960
City of Chicago	IL	44,712
City of Chicago	IL	174,792
City of Chicago	IL	623,028
City of Rockford	IL	39,947
City of Rockford	IL	102,993
City of Rockford	IL	204,120

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
City of Rockford	IL	148,126
City of Rockford	IL	137,893
City of Rockford	IL	33,764
City of Rockford	IL	164,108
City of Rockford	IL	86,160
City of Rockford	IL	163,296
City of Rockford	IL	204,120
City of Rockford	IL	93,079
City of Rockford	IL	122,472
City of Urbana	IL	196,879
Community & Economic Development Assn. of Cook County, Inc	IL	265,875
Community Counseling Center of Northern Madison County	IL	281,693
Community Crisis Center, Inc	IL	66,500
Community Crisis Center, Inc	IL	30,135
Community Elements, Inc. dba MHC of Champaign County	IL	185,543
Community Elements, Inc. dba MHC of Champaign County	IL	43,043
Community Mental Health Council, Inc	IL	97,391
Community Mental Health Council, Inc	IL	73,013
Community Mental Health Council, Inc	IL	123,736
Community Mental Health Council, Inc	IL	66,007
Community Mental Health Council, Inc	IL	128,453
Community Supportive Living Systems, Inc	IL	201,120
Connections for Abused Women and their Children	IL	23,695
Connections for the Homeless Inc	IL	100,160
Connections for the Homeless Inc	IL	106,975
Connections for the Homeless Inc	IL	117,197
Connections for the Homeless Inc	IL	22,869
Connections for the Homeless Inc	IL	60,000
Connections for the Homeless Inc	IL	112,560
Connections for the Homeless Inc	IL	187,847
Connections for the Homeless Inc	IL	43,682
Connections for the Homeless Inc	IL	94,535
Connections for the Homeless Inc	IL	71,526
Cornerstone Community Outreach	IL	44,037
Cornerstone Community Outreach	IL	79,017
Cornerstone Community Outreach	IL	132,224
Cornerstone Services, Inc	IL	115,071
Cornerstone Services, Inc	IL	1,702,441
Cornerstone Services, Inc	IL	51,828
Cornerstone Services, Inc	IL	25,476
Cornerstone Services, Inc	IL	24,948
County of Kendall	IL	70,000
Deborah's Place	IL	330,293
Deborah's Place	IL	150,144
Deborah's Place	IL	417,076
Deborah's Place	IL	188,064
Decatur Housing Authority	IL	129,216
Decatur Housing Authority	IL	44,412
Decatur Housing Authority	IL	16,711
DeLaCerda House, Inc	IL	56,429
Delta Center, Inc	IL	19,338
Dove, Inc	IL	74,828
Dove, Inc	IL	329,047
Dove, Inc	IL	156,326
Dove, Inc	IL	33,488
Dove, Inc	IL	16,941
Dove, Inc	IL	35,747
Dove, Inc	IL	17,103
DuPage County	IL	35,550
DuPage County	IL	151,667
DuPage County Health Department	IL	573,994
DuPage County Health Department	IL	51,920
DuPage County Health Department	IL	264,384
DuPage P.A.D.S., Inc	IL	26,950
DuPage P.A.D.S., Inc	IL	302,368
DuPage P.A.D.S., Inc	IL	98,980
DuPage P.A.D.S., Inc	IL	123,472
East St. Louis Housing Authority	IL	342,780
Ecker Center for Mental Health	IL	173,302
Ecker Center for Mental Health	IL	164,930
EdgeAlliance, Inc	IL	366,108
Embarras River Basin Agency, Inc	IL	252,920

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Embarras River Basin Agency, Inc	IL	93,961
Embarras River Basin Agency, Inc	IL	154,722
Facing Forward to End Homelessness	IL	286,841
Family Rescue Incorporated	IL	58,165
Family Rescue Incorporated	IL	571,732
FEATHERFIST	IL	264,173
FEATHERFIST	IL	114,300
FEATHERFIST	IL	259,219
FEATHERFIST	IL	517,459
FEATHERFIST	IL	298,232
FEATHERFIST	IL	141,395
FEATHERFIST	IL	112,483
FEATHERFIST	IL	300,843
FEATHERFIST	IL	221,315
FEATHERFIST	IL	129,817
Fifth Street Renaissance	IL	17,464
Fifth Street Renaissance	IL	17,466
Fifth Street Renaissance	IL	24,150
Freedom House	IL	62,000
Freeport Area Church Cooperative	IL	57,109
Freeport Area Church Cooperative	IL	100,674
Good Samaritan House of Granite City, Inc	IL	154,355
Good Samaritan Ministries-A Project of the Carbondale Interf	IL	74,212
Goodwill Industries of Central Illinois	IL	167,696
Healthcare Alternative Systems, Inc	IL	197,711
Heartland Health Outreach, Inc	IL	126,332
Heartland Health Outreach, Inc	IL	948,721
Heartland Health Outreach, Inc	IL	320,269
Heartland Health Outreach, Inc	IL	484,722
Heartland Health Outreach, Inc	IL	357,170
Heartland Health Outreach, Inc	IL	100,629
Heartland Health Outreach, Inc	IL	270,101
Heartland Human Care Services, Inc	IL	316,829
Heartland Human Care Services, Inc	IL	507,826
Heartland Human Care Services, Inc	IL	254,948
Heartland Human Care Services, Inc	IL	41,668
Heartland Human Care Services, Inc	IL	441,059
Heartland Human Care Services, Inc	IL	1,162,457
Heartland Human Care Services, Inc	IL	1,093,663
Helping Hands of Springfield, Inc	IL	116,964
Helping Hands of Springfield, Inc	IL	17,466
Home of the Sparrow, Inc	IL	54,600
Home of the Sparrow, Inc	IL	27,064
Hope Haven of DeKalb County, Inc	IL	98,374
Hope Haven of DeKalb County, Inc	IL	95,268
HOPE of East Central Illinois	IL	77,552
HOPE of Rochelle	IL	45,000
Housing Authority of the City of Pekin	IL	113,850
Housing Authority of the City of Rock Island	IL	50,976
Housing Authority of the County of Cook	IL	154,464
Housing Authority of the County of Cook	IL	431,484
Housing Opportunities for Women, Inc	IL	863,032
Housing Opportunities for Women, Inc	IL	190,181
Housing Opportunities for Women, Inc	IL	464,308
Housing Opportunities for Women, Inc	IL	64,920
Housing Opportunity Development Corporation	IL	47,392
Housing Opportunity Development Corporation	IL	17,750
Housing Options for the Mentally Ill	IL	83,560
Housing Options for the Mentally Ill	IL	120,413
Housing Options for the Mentally Ill	IL	112,962
Hoyleton Youth and Family Services	IL	41,362
Hull House Association	IL	378,229
Human Resources Development Institute, Inc. (HRDI)	IL	427,768
Human Service Center	IL	75,668
Human Service Center	IL	131,597
Illinois Department of Veterans Affairs	IL	115,588
Illinois Valley Economic Development Corporation	IL	103,084
Inspiration Corporation	IL	111,182
Inspiration Corporation	IL	199,224
Inspiration Corporation	IL	83,462
Inspiration Corporation	IL	323,235
Inspiration Corporation	IL	85,667

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Inspiration Corporation	IL	40,258
Interdependent Living Solutions Center	IL	156,964
Interfaith House Inc	IL	364,719
I–PLUS	IL	12,805
I–PLUS	IL	22,069
Iroquois-Kankakee Regional Office of Education #32	IL	53,550
Kane County, Illinois	IL	109,853
La Casa Norte	IL	307,140
La Casa Norte	IL	90,982
Lake County	IL	333,456
Lake County	IL	137,331
Lake County	IL	54,240
Lake County	IL	58,184
Lake County	IL	95,648
Lake County	IL	110,250
Lake County	IL	46,274
Lake County	IL	45,507
Lake County	IL	82,766
Lake County	IL	184,940
Lake County	IL	42,290
Latin United Community Housing Associaiton	IL	32,130
Lazarus House	IL	54,331
Lazarus House	IL	63,927
Light The Way, Inc	IL	173,387
M.E.R.C.Y. Communities, Inc	IL	34,928
M.E.R.C.Y. Communities, Inc	IL	169,614
M.E.R.C.Y. Communities, Inc	IL	83,190
Madison, County of	IL	197,904
Madison, County of	IL	308,320
Matthew House	IL	223,993
Matthew House	IL	123,866
McDermott Center	IL	58,026
MCS Community Services	IL	101,994
MCS Community Services	IL	55,168
Mercy Housing Lakefront	IL	187,833
Mercy Housing Lakefront	IL	129,785
Mercy Housing Lakefront	IL	61,950
Mercy Housing Lakefront	IL	238,645
Mercy Housing Lakefront	IL	259,631
Mercy Housing Lakefront	IL	125,546
Mid Central Community Action, Inc	IL	32,917
Ministers United Against Human Suffering	IL	50,000
NCO YOUTH & FAMILY SERVICES	IL	202,584
Near West Side Community Development Corporation	IL	97,781
New Foundation Center, Inc. (formerly WilPower, Inc.)	IL	277,596
New Foundation Center, Inc. (formerly WilPower, Inc.)	IL	170,245
New Moms, Inc	IL	245,039
North Side Housing and Supportive Services	IL	61,271
North Side Housing and Supportive Services	IL	76,381
North Side Housing and Supportive Services	IL	105,900
North Side Housing and Supportive Services	IL	398,160
North Side Housing and Supportive Services	IL	112,120
Northwestern Memorial Hospital	IL	217,518
Northwestern Memorial Hospital	IL	153,844
Northwestern Memorial Hospital	IL	301,910
PADS Crisis Services, Inc	IL	226,376
PADS to HOPE, Inc	IL	183,665
Peoria Housing Authority	IL	164,880
Peoria OPportunities Foundation	IL	246,505
Pillars Community Services	IL	477,060
Pillars Community Services	IL	31,177
Pillars Community Services	IL	521,332
Pillars Community Services	IL	110,000
Pillars Community Services	IL	24,115
Pioneer Center for Human Services	IL	105,000
Pioneer Center for Human Services	IL	231,548
Pioneer Center for Human Services	IL	261,821
Pioneer Civic Services, Inc	IL	114,126
Polish American Association	IL	50,904
Prairie State Legal Services, Inc	IL	68,780
Prairie State Legal Services, Inc	IL	50,000
Project NOW, Inc	IL	119,444

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Project NOW, Inc	IL	127,942
Project NOW, Inc	IL	58,712
Public Action to Deliver Shelter, Inc	IL	62,765
Public Action to Deliver Shelter, Inc	IL	64,060
Public Action to Deliver Shelter, Inc	IL	32,030
Public Action to Deliver Shelter, Inc	IL	234,302
Renaissance Social Services, Inc	IL	133,970
Renaissance Social Services, Inc	IL	982,800
Residents for Effective Shelter Transitions	IL	286,520
Residents for Effective Shelter Transitions	IL	167,813
Sarah's Circle	IL	66,463
Sarah's Circle	IL	103,563
Shields Township	IL	162,720
Single Room Housing Assistance Corporation	IL	365,000
Single Room Housing Assistance Corporation	IL	421,988
Single Room Housing Assistance Corporation	IL	488,047
South Side Office of Concern	IL	14,962
South Side Office of Concern	IL	52,977
South Side Office of Concern	IL	31,156
South Suburban Family Shelter Inc	IL	281,957
South Suburban PADS	IL	284,574
South Suburban PADS	IL	726,151
Southern Illinois Coalition for the Homeless	IL	60,511
Southern Illinois Coalition for the Homeless	IL	50,878
Southern Illinois Coalition for the Homeless	IL	84,702
Springfield Housing Authority	IL	49,068
St. Clair County	IL	50,000
St. Clair County	IL	38,340
St. Clair County	IL	169,439
St. Clair County	IL	176,796
St. Clair County	IL	297,084
St. Leonard's Ministries	IL	42,525
Stopping Woman Abuse Now	IL	71,640
Stopping Woman Abuse Now	IL	53,788
Supportive Housing Development Corporation	IL	124,000
Teen Living Programs, Inc	IL	128,373
Teen Living Programs, Inc	IL	189,334
The Cathedral Shelter of Chicago	IL	53,122
The Cathedral Shelter of Chicago	IL	35,332
The Center for Prevention of Abuse	IL	172,759
The Center for Women in Transition	IL	8,963
The Center of Concern	IL	130,534
The Eagle's Nest of St. Clair County	IL	54,465
The Housing Authority of the County of DeKalb	IL	398,376
The Inner Voice, Inc	IL	298,237
The Inner Voice, Inc	IL	196,062
The Inner Voice, Inc	IL	331,601
The Inner Voice, Inc	IL	362,611
The Inner Voice, Inc	IL	76,484
The Interfaith Housing Development Corporation of Chicago	IL	77,301
The Larkin Center	IL	300,575
The Night Ministry	IL	74,260
The Night Ministry	IL	144,391
The Renaissance Collaborative, Inc	IL	166,006
The Salvation Army of Kankakee County	IL	109,927
The Women's Center	IL	21,300
The Women's Center	IL	29,308
Thresholds Inc	IL	162,687
Thresholds Inc	IL	78,489
Thresholds Inc	IL	199,489
Thresholds Inc	IL	152,825
Thresholds Inc	IL	78,489
Thresholds Inc	IL	243,889
Thresholds Inc	IL	351,158
Thresholds Inc	IL	403,199
Thresholds Inc	IL	403,605
Together We Cope	IL	124,837
Together We Cope	IL	190,517
Transitional Living Services	IL	47,245
Tri-County Opportunities Council	IL	62,150
Trinity Services, Inc	IL	253,317
Unity Parenting & Counseling Inc	IL	175,025

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Unity Parenting & Counseling Inc	IL	420,453
Unity Parenting & Counseling Inc	IL	497,620
Unity Parenting & Counseling Inc	IL	121,688
Vital Bridges NFP, Inc	IL	169,845
Western Illinois Regional Council—Community Action Agency	IL	54,906
WINGS Program, Inc	IL	43,402
WINGS Program, Inc	IL	44,693
WINGS Program, Inc	IL	84,968
WINGS Program, Inc	IL	100,120
WINGS Program, Inc	IL	124,554
WINGS Program, Inc	IL	89,874
YMCA of Metropolitan Chicago	IL	231,259
YMCA of Metropolitan Chicago	IL	59,645
Young Men's Christian Association of Chicago	IL	36,313
Young Men's Christian Association of Chicago	IL	225,546
Young Men's Christian Association of Chicago	IL	468,552
Your Family Resource Connection	IL	137,743
Youth Service Bureau	IL	91,899
Youth Services Network	IL	250,566
YWCA of QuInc	IL	138,031
YWCA of Quincy	IL	331,349
YWCA Peoria IL	IL	92,912
YWCA Peoria IL	IL	196,215
YWCA Peoria IL	IL	214,530
A Better Way Services, Inc	IN	149,617
AIDS Ministries/AIDS Assist of North Indiana, Inc	IN	100,703
AIDS Ministries/AIDS Assist of North Indiana, Inc	IN	35,558
Alternatives Incorporated of Madison County	IN	102,317
Amethyst House, Inc	IN	87,054
Aurora INC	IN	191,835
Blue River Services, Inc	IN	44,778
Bridges Community Services, Inc	IN	218,556
Bridges Community Services, Inc	IN	171,652
Cedars HOPE, Inc	IN	35,700
Cedars HOPE, Inc	IN	86,380
Centerstone of Indiana Inc. formerly SCCMHC	IN	37,968
Centerstone of Indiana Inc. formerly SCCMHC	IN	41,063
Centerstone of Indiana Inc. formerly SCCMHC	IN	253,931
City of Bloomington, Indiana	IN	61,980
City of Indianapolis	IN	142,908
City of Indianapolis	IN	76,920
City of Indianapolis	IN	492,180
City of Indianapolis	IN	160,200
City of Indianapolis	IN	105,409
City of Indianapolis	IN	114,752
City of Indianapolis	IN	192,300
City of Indianapolis	IN	123,072
City of Indianapolis	IN	121,233
City of Indianapolis	IN	76,920
City of Indianapolis	IN	100,461
City of Indianapolis	IN	121,132
City of Indianapolis	IN	152,628
City of Indianapolis	IN	384,600
City of Indianapolis	IN	806,460
City of Indianapolis	IN	150,859
City of Indianapolis	IN	159,925
City of Indianapolis	IN	323,064
City of Indianapolis	IN	84,199
City of Indianapolis	IN	267,300
City of Indianapolis	IN	72,696
City of South Bend, Indiana	IN	43,344
City of South Bend, Indiana	IN	142,824
City of South Bend, Indiana	IN	93,912
Community Mental Health Center, Inc	IN	107,425
Community Mental Health Center, Inc	IN	156,767
Community Mental Health Center, Inc	IN	57,052
Community Mental Health Center, Inc	IN	83,084
Community Mental Health Center, Inc	IN	167,505
Community Mental Health Center, Inc	IN	302,374
Council on Domestic Abuse, Inc	IN	87,743
CRWorks, Inc	IN	140,836
ECHO Housing Corporation	IN	97,001

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
ECHO Housing Corporation	IN	231,495
Edgewater Systems for Balanced Living	IN	119,022
Evansville Goodwill Industries, Inc	IN	220,133
Family Crisis Shelter	IN	60,558
Family Service Association of Howard County, Inc	IN	110,858
Family Services of Elkhart County, Inc	IN	46,856
Fort Wayne Women's Bureau, Inc	IN	89,775
Gary Commission for Women	IN	138,066
Genesis Outreach, Inc	IN	42,000
Hope House, Inc	IN	133,678
Hope House, Inc	IN	64,890
Housing Opportunities Inc	IN	82,601
Housing Opportunities Inc	IN	83,167
Housing Opportunities Inc	IN	82,734
Housing Opportunities Inc	IN	49,450
Housing Opportunities Inc	IN	84,484
Human Services, Inc	IN	108,084
Human Services, Inc	IN	36,588
Indiana Housing and Community Development Authority	IN	363,998
Indiana Housing and Community Development Authority	IN	44,292
Indiana Housing and Community Development Authority	IN	499,560
Indiana Housing and Community Development Authority	IN	591,360
Indiana Housing and Community Development Authority	IN	99,564
Indiana Housing and Community Development Authority	IN	273,180
Indiana Housing and Community Development Authority	IN	67,668
Indiana Housing and Community Development Authority	IN	834,300
Indiana Housing and Community Development Authority	IN	110,736
Indiana Housing and Community Development Authority	IN	117,360
Indiana Housing and Community Development Authority	IN	292,428
Indiana Housing and Community Development Authority	IN	181,488
Indiana Housing and Community Development Authority	IN	75,318
Indiana Housing and Community Development Authority	IN	67,680
Indiana Housing and Community Development Authority	IN	105,924
Indiana Housing and Community Development Authority	IN	435,180
Indiana Housing and Community Development Authority	IN	510,384
Indiana Housing and Community Development Authority	IN	510,600
Indiana Housing and Community Development Authority	IN	865,800
Interfaith Mission, Inc	IN	45,500
Kosciusko County Shelter for Abuse d/b/a The Beaman Home	IN	37,556
Lafayette Transitional Housing Center, Inc	IN	104,186
Lafayette Transitional Housing Center, Inc	IN	73,893
Lafayette Transitional Housing Center, Inc	IN	75,337
Life Treatment Centers	IN	70,293
LifeSpring, Inc	IN	235,570
LifeSpring, Inc	IN	51,135
Martha's House, Inc	IN	133,793
Mental Health Association in Vigo County	IN	69,475
Middle Way House, Incorporated	IN	171,093
Oaklawn Psychiatric Center	IN	112,000
Oaklawn Psychiatric Center	IN	57,148
Pathfinder Services, Inc	IN	144,478
St. Elizabeth Catholic Charities	IN	187,231
Stepping Stones, Inc	IN	78,748
The Center for the Homeless	IN	89,636
The Center for the Homeless	IN	192,593
The Center for the Homeless	IN	135,662
The Center for the Homeless	IN	33,272
The Center for the Homeless	IN	77,778
The Center for the Homeless	IN	25,902
The Center for Women and Families	IN	223,144
The Salvation Army	IN	121,347
The Salvation Army	IN	158,247
The Stepping Stone Shelter For Women, Incorporated	IN	183,456
The YWCA of St. Joseph County	IN	65,000
The YWCA of St. Joseph County	IN	165,076
United Caring Shelters, Inc	IN	60,424
Vincent Village, Inc	IN	52,944
Vincent Village, Inc	IN	89,788
Vincent Village, Inc	IN	48,451
YWCA of Evansville, IN, Inc	IN	86,865
Catholic Charities of Northeast Kansas, Inc	KS	184,995
City of Topeka, Ks	KS	1,394,784

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
City of Wichita Housing Authority	KS	684,060
CLASS LTD	KS	179,015
Community Action, Inc	KS	171,550
Community Resources Council	KS	87,200
County of Sedgwick	KS	279,523
County of Sedgwick	KS	41,946
Cowley County Safe Homes, Inc	KS	133,332
Inter-Faith Ministries Wichita, Inc	KS	43,050
Inter-Faith Ministries Wichita, Inc	KS	138,198
Inter-Faith Ministries Wichita, Inc	KS	56,420
Inter-Faith Ministries Wichita, Inc	KS	106,656
Johnson County Mental Health Center	KS	105,552
Kansas Housing Resources Corporation	KS	133,000
Kansas Legal Services	KS	190,607
Lawrence-Douglas County Housing Authority	KS	87,729
Manhattan Emergency Shelter, Inc	KS	204,656
Manhattan Emergency Shelter, Inc	KS	151,639
Marshall County Community Resource and Education Center	KS	30,660
Mental Health America of the Heartland	KS	95,587
Mid America Assistance Coalition	KS	18,666
My Father's House Community Services, Inc	KS	409,693
My Father's House Community Services, Inc	KS	215,670
NEK–CAP, Inc	KS	160,360
New Beginnings, Inc	KS	125,716
Plumb Place Inc	KS	80,007
Prairie View Inc	KS	136,090
SAFEHOME, Inc	KS	57,568
Salina Housing Authority	KS	86,400
The Kansas City Metropolitan Lutheran Ministry	KS	132,978
The Salvation Army	KS	333,333
The Salvation Army	KS	48,877
The Salvation Army	KS	131,176
The Salvation Army	KS	328,805
The Salvation Army	KS	61,866
The Salvation Army	KS	129,307
Unified Government of Wyandotte County/KCK	KS	53,961
Unified Government of Wyandotte County/KCK	KS	284,661
Unified Government of Wyandotte County/KCK	KS	55,235
Unified Government of Wyandotte County/KCK	KS	89,945
Unified Government of Wyandotte County/KCK	KS	29,565
United Methodist Open Door, Inc	KS	80,804
United Methodist Open Door, Inc	KS	84,377
United Methodist Open Door, Inc	KS	56,238
United Way of the Plains	KS	86,663
USD 500 Kansas City Kansas Public Schools	KS	22,660
Valeo Behavioral Health Care, Inc	KS	106,765
Wichita Children's Home	KS	102,566
Bellewood Presbyterian Home for Children	KY	143,478
Bellewood Presbyterian Home for Children	KY	88,327
Bluegrass Regional Mental Health-Mental Retardation Board, I	KY	167,268
Choices, Inc	KY	70,497
Chrysalis House, Inc	KY	219,154
Chrysalis House, Inc	KY	85,595
Coalition for the Homeless, Inc	KY	122,311
Community Action Council for Lexington-Fayette, Bourbon, Har	KY	65,129
Daniel Pitino Shelter, Inc	KY	266,039
Family Health Centers, Inc	KY	255,146
Father Maloney's Boys' Haven	KY	169,846
Home of the Innocents	KY	88,844
Hope Center, Inc	KY	269,334
Hope Center, Inc	KY	166,667
House of Ruth, Inc	KY	137,694
Independent Living Options, Inc	KY	128,999
Jefferson Street Baptist Center	KY	75,316
Kentucky Housing Corporation	KY	10,414
Kentucky Housing Corporation	KY	171,615
Kentucky Housing Corporation	KY	126,055
Kentucky Housing Corporation	KY	168,191
Kentucky Housing Corporation	KY	150,359
Kentucky Housing Corporation	KY	66,500
Kentucky Housing Corporation	KY	268,548
Kentucky Housing Corporation	KY	651,835

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Kentucky Housing Corporation	KY	83,363
Kentucky Housing Corporation	KY	225,438
Kentucky Housing Corporation	KY	93,688
Kentucky Housing Corporation	KY	618,877
Kentucky Housing Corporation	KY	63,580
Kentucky Housing Corporation	KY	277,614
Kentucky Housing Corporation	KY	539,471
Kentucky Housing Corporation	KY	88,664
Kentucky Housing Corporation	KY	78,641
Kentucky Housing Corporation	KY	189,262
Kentucky Housing Corporation	KY	161,946
Kentucky Housing Corporation	KY	29,485
Kentucky Housing Corporation	KY	113,724
Kentucky Housing Corporation	KY	167,508
Kentucky Housing Corporation	KY	190,000
Kentucky Housing Corporation	KY	25,727
Kentucky Housing Corporation	KY	105,184
Kentucky Housing Corporation	KY	279,095
Kentucky Housing Corporation	KY	333,323
Kentucky Housing Corporation	KY	85,303
Kentucky Housing Corporation	KY	200,108
Kentucky Housing Corporation	KY	278,472
Kentucky Housing Corporation	KY	52,920
Kentucky Housing Corporation	KY	94,234
Kentucky Housing Corporation	KY	277,702
Kentucky Housing Corporation	KY	77,312
Kentucky Housing Corporation	KY	50,392
Kentucky Housing Corporation	KY	222,440
Kentucky Housing Corporation	KY	24,288
Kentucky Housing Corporation	KY	116,679
Kentucky Housing Corporation	KY	196,860
Kentucky Housing Corporation	KY	35,694
Kentucky Housing Corporation	KY	479,860
Kentucky Housing Corporation	KY	50,341
Kentucky Housing Corporation	KY	455,593
Kentucky Housing Corporation	KY	80,646
Kentucky Housing Corporation	KY	171,039
Kentucky Housing Corporation	KY	194,216
Lexington-Fayette Urban County Housing Authority	KY	209,496
Louisville/Jefferson County Metro Government	KY	31,920
Louisville/Jefferson County Metro Government	KY	1,462,968
Louisville/Jefferson County Metro Government	KY	83,280
Louisville/Jefferson County Metro Government	KY	66,012
Louisville/Jefferson County Metro Government	KY	610,860
Louisville/Jefferson County Metro Government	KY	241,656
Louisville/Jefferson County Metro Government	KY	36,480
Louisville/Jefferson County Metro Government	KY	38,249
Louisville/Jefferson County Metro Government	KY	28,080
New Beginnings, Bluegrass, Inc	KY	53,492
New Directions Housing Corporation	KY	58,245
Owensboro Area Shelter, Information & Services, Inc	KY	515,225
Schizophrenia Foundation, KY., Inc	KY	21,000
Schizophrenia Foundation, KY., Inc	KY	211,649
Schizophrenia Foundation, KY., Inc	KY	28,054
Seven Counties Services, Inc	KY	93,060
Society of St. Vincent de Paul	KY	420,699
Society of St. Vincent de Paul	KY	115,516
Society of St. Vincent de Paul	KY	137,938
Society of St. Vincent de Paul	KY	427,747
The Center for Women and Families	KY	49,875
The Salvation Army, A Georgia Corporation	KY	119,999
Transitions, Inc	KY	162,503
Transitions, Inc	KY	8,767
Transitions, Inc	KY	79,363
Transitions, Inc	KY	82,545
Transitions, Inc	KY	236,770
Volunteers of America of Kentucky, Inc	KY	164,045
Volunteers of America of Kentucky, Inc	KY	246,682
Volunteers of America of Kentucky, Inc	KY	128,390
Volunteers of America of Kentucky, Inc	KY	371,611
Wayside Christian Mission	KY	81,902
Wayside Christian Mission	KY	25,575

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Wayside Christian Mission	KY	103,369
Welcome House of Northern Kentucky, Inc	KY	469,348
Acadiana C.A.R.E.S., Inc	LA	146,178
Acadiana C.A.R.E.S., Inc	LA	21,000
Acadiana C.A.R.E.S., Inc	LA	233,216
Acadiana C.A.R.E.S., Inc	LA	59,583
Acadiana Outreach Center, Inc	LA	49,290
Acadiana Outreach Center, Inc	LA	129,868
Acadiana Outreach Center, Inc	LA	136,941
ASSIST Agency	LA	97,520
Bridge House Corporation	LA	197,189
Caddo Parish School Board	LA	85,073
Capital Area Alliance for the Homeless	LA	80,000
Catholic Charities Archdiocese of New Orleans	LA	126,524
Catholic Charities Archdiocese of New Orleans	LA	101,734
Catholic Charities Archdiocese of New Orleans	LA	93,595
Cenla Chemical Dependency Council, Inc	LA	208,278
Central Louisiana Coalition to Prevent Homelessness	LA	58,244
City of Baton Rouge & Parish of East Baton Rouge	LA	39,900
City of Baton Rouge & Parish of East Baton Rouge	LA	63,418
City of Baton Rouge & Parish of East Baton Rouge	LA	20,458
City of Baton Rouge & Parish of East Baton Rouge	LA	197,204
City of Baton Rouge & Parish of East Baton Rouge	LA	83,727
City of Baton Rouge & Parish of East Baton Rouge	LA	86,461
City of Baton Rouge & Parish of East Baton Rouge	LA	144,868
City of Baton Rouge & Parish of East Baton Rouge	LA	97,334
City of Baton Rouge & Parish of East Baton Rouge	LA	63,661
City of Baton Rouge & Parish of East Baton Rouge	LA	177,563
City of Baton Rouge & Parish of East Baton Rouge	LA	93,164
City of Baton Rouge & Parish of East Baton Rouge	LA	85,599
City of Baton Rouge & Parish of East Baton Rouge	LA	46,292
City of New Orleans Office of Community Development	LA	614,352
Community Directions, Inc	LA	72,905
Community Directions, Inc	LA	66,940
Community Support Programs, Inc	LA	263,208
Community Support Programs, Inc	LA	291,418
Community Support Programs, Inc	LA	301,902
Council on Alcoholism & Drug Abuse of Northwest Louisiana	LA	252,159
Covenant House New Orleans	LA	144,622
Covenant House New Orleans	LA	79,735
Easter Seals Louisiana	LA	208,320
Elisha Ministries DBA Supportive Housing of Northeast LA	LA	102,695
Elisha Ministries DBA Supportive Housing of Northeast LA	LA	85,123
Faith House, Inc	LA	209,328
Faith House, Inc	LA	67,998
First Evangelist Housing Community Development Corporation	LA	150,000
Gulf Coast Teaching Family Services	LA	135,657
Gulf Coast Teaching Family Services, Inc	LA	199,932
Gulf Coast Teaching Family Services, Inc	LA	170,722
Gulf Coast Teaching Family Services, Inc	LA	134,360
Gulf Coast Teaching Family Services, Inc	LA	100,153
Hammond Housing Authority	LA	180,870
Holy Cross Episcopal Church	LA	33,944
Hope House of Central Louisiana	LA	129,084
Housing Authority of the City of Bossier City, Louisiana	LA	60,960
Housing Authority of the City of Bossier City, Louisiana	LA	396,240
Housing Authority of the City of Sulphur	LA	154,584
Iberia Homeless Shelter Inc	LA	33,040
Inner City Revitalization Corp	LA	33,333
Jefferson Parish Department of Community Development	LA	367,872
Jefferson Parish Human Services Authority	LA	281,336
LAEHCY	LA	62,092
Lafayette Catholic Service Centers, Inc	LA	35,401
Lafayette Catholic Service Centers, Inc	LA	100,533
Lafayette Catholic Service Centers, Inc	LA	166,213
Lafayette Catholic Service Centers, Inc	LA	114,499
Lafayette Catholic Service Centers, Inc	LA	30,975
Lafayette Catholic Service Centers, Inc	LA	56,000
Lafayette Catholic Service Centers, Inc	LA	35,087
Lake Charles Housing Authority	LA	205,092
Metropolitan Center for Women and Children, Inc	LA	113,344
Metropolitan Human Services District	LA	1,252,680

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Monroe Housing Authority	LA	154,620
NAMI New Orleans	LA	157,093
Our House, Inc	LA	57,447
Philadelphia Center	LA	176,400
Providence House	LA	161,481
Providence House	LA	91,535
Rays of Sonshine	LA	149,737
Responsibility House, Inc	LA	208,528
Responsibility House, Inc	LA	136,221
Shreveport SRO, Inc. dba Centerpoint Community Services	LA	125,200
Shreveport SRO, Inc. dba Centerpoint Community Services	LA	62,133
Southeast Louisiana State hospital	LA	163,257
Southeast Louisiana State hospital	LA	166,497
Southeast Louisiana State hospital	LA	80,134
Southeast Louisiana State hospital	LA	68,431
Southeast Spouse Abuse Program	LA	147,993
Southeast Spouse Abuse Program	LA	87,978
Southeastern Louisiana University	LA	148,109
Southwestern Louisiana Homeless Coalition, Inc	LA	56,158
Southwestern Louisiana Homeless Coalition, Inc	LA	52,452
Southwestern Louisiana Homeless Coalition, Inc	LA	24,547
St. Martin, Iberia, Lafayette Community Action Agency SMILE	LA	31,911
St. Mary Community Action Committee Association, Inc	LA	64,496
St. Mary Community Action Committee Association, Inc	LA	73,420
St. Tammany Parish Government	LA	94,405
START Corporation	LA	111,860
START Corporation	LA	162,787
START Corporation	LA	224,584
START Corporation	LA	161,192
The Church United for Community Development	LA	24,698
The Church United for Community Development	LA	105,305
The Wellspring Alliance for Families, Inc	LA	160,032
The Wellspring Alliance for Families, Inc	LA	72,859
The Wellspring Alliance for Families, Inc	LA	80,209
The Wellspring Alliance for Families, Inc	LA	89,532
The Wellspring Alliance for Families, Inc	LA	260,685
UNITY of Greater New Orleans	LA	148,711
UNITY of Greater New Orleans	LA	906,748
UNITY of Greater New Orleans	LA	208,645
UNITY of Greater New Orleans	LA	99,238
UNITY of Greater New Orleans	LA	244,276
UNITY of Greater New Orleans	LA	166,902
UNITY of Greater New Orleans	LA	203,776
UNITY of Greater New Orleans	LA	480,201
UNITY of Greater New Orleans	LA	380,884
UNITY of Greater New Orleans	LA	173,250
UNITY of Greater New Orleans	LA	570,084
UNITY of Greater New Orleans	LA	160,537
UNITY of Greater New Orleans	LA	121,819
UNITY of Greater New Orleans	LA	460,580
UNITY of Greater New Orleans	LA	128,907
UNITY of Greater New Orleans	LA	312,105
UNITY of Greater New Orleans	LA	666,584
UNITY of Greater New Orleans	LA	490,057
UNITY of Greater New Orleans	LA	134,683
UNITY of Greater New Orleans	LA	78,893
UNITY of Greater New Orleans	LA	109,842
UNITY of Greater New Orleans	LA	1,079,593
UNITY of Greater New Orleans	LA	217,498
UNITY of Greater New Orleans	LA	479,078
UNITY of Greater New Orleans	LA	502,142
UNITY of Greater New Orleans	LA	306,647
UNITY of Greater New Orleans	LA	50,999
UNITY of Greater New Orleans	LA	86,297
UNITY of Greater New Orleans	LA	162,469
UNITY of Greater New Orleans	LA	489,656
Vernon Community Action Council, Inc	LA	70,092
Volunteer Center Southwest Louisiana Inc	LA	116,483
Volunteers of America—Greater Baton Rouge	LA	180,507
Volunteers of America—Greater Baton Rouge	LA	122,794
Volunteers Of America North LA	LA	144,795
Volunteers Of America North LA	LA	324,101

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Volunteers Of America North LA	LA	112,074
Volunteers Of America North LA	LA	102,187
Volunteers Of America North LA	LA	197,400
Volunteers of America North Louisiana	LA	63,521
Volunteers of America North Louisiana	LA	78,720
Volunteers of America of Greater New Orleans, Inc	LA	82,901
Volunteers of America of Greater New Orleans, Inc	LA	161,320
Volunteers of America of Greater New Orleans, Inc	LA	196,288
Volunteers of America of Greater New Orleans, Inc	LA	50,000
Volunteers of America of Greater New Orleans, Inc	LA	44,343
Volunteers of America of Greater New Orleans, Inc	LA	111,884
Volunteers of America of Greater New Orleans, Inc	LA	538,656
Volunteers of America of Greater New Orleans, Inc	LA	481,497
Volunteers of America of Greater New Orleans, Inc	LA	321,948
Volunteers of America of North Louisiana	LA	96,206
Volunteers of America, Greater Baton Rouge, Inc	LA	59,860
Volunteers of America, Greater Baton Rouge, Inc	LA	173,105
Women Outreaching Women	LA	43,864
Women Outreaching Women	LA	43,327
Action Inc	MA	158,941
Action Inc	MA	114,400
Advocates Inc	MA	117,213
Advocates Inc	MA	83,860
Advocates Inc	MA	168,022
Advocates Inc	MA	33,438
Advocates Inc	MA	83,860
Advocates Inc	MA	169,781
Barnstable Housing Authority	MA	35,280
Barnstable Housing Authority	MA	60,408
Barnstable Housing Authority	MA	385,560
Berkshire Community Action Council	MA	133,190
Berkshire Community Action Council	MA	12,000
Berkshire Community Action Council	MA	53,593
Berkshire Community Action Council	MA	34,988
Berkshire Community Action Council	MA	26,700
Brookline Community Mental Health Center	MA	70,797
Brookline Community Mental Health Center	MA	121,098
Cambridge Housing Authority	MA	292,320
CASPAR, Inc	MA	39,138
CASPAR, Inc	MA	150,793
CASPAR, Inc	MA	81,498
CASPAR, Inc	MA	114,450
Catholic Charitable Bureau of the Archdiocese of Boston, Inc	MA	50,972
Catholic Social Services of Fall River, Inc	MA	119,469
Catholic Social Services of Fall River, Inc	MA	31,708
Catholic Social Services of Fall River, Inc	MA	25,811
Central Massachusetts Housing Alliance, Inc	MA	219,247
Central Massachusetts Housing Alliance, Inc	MA	363,419
Central Massachusetts Housing Alliance, Inc	MA	133,416
Central Massachusetts Housing Alliance, Inc	MA	117,667
Central Massachusetts Housing Alliance, Inc	MA	45,734
Central Massachusetts Housing Alliance, Inc	MA	181,325
Central Massachusetts Housing Alliance, Inc	MA	259,536
Central Massachusetts Housing Alliance, Inc	MA	98,786
Central Massachusetts Housing Alliance, Inc	MA	78,601
Central Massachusetts Housing Alliance, Inc	MA	139,119
Central Massachusetts Housing Alliance, Inc	MA	181,431
Central Massachusetts Housing Alliance, Inc	MA	49,700
Central Massachusetts Housing Alliance, Inc	MA	104,999
Central Massachusetts Housing Alliance, Inc	MA	146,490
Central Massachusetts Housing Alliance, Inc	MA	655,822
Central Massachusetts Housing Alliance, Inc	MA	38,850
Central Massachusetts Housing Alliance, Inc	MA	262,500
Citizens for Affordable Housing in Newton Development Organ,	MA	12,616
City of Boston Acting by and through its PFC by DND	MA	129,960
City of Boston Acting by and through its PFC by DND	MA	345,636
City of Boston Acting by and through its PFC by DND	MA	411,215
City of Boston Acting by and through its PFC by DND	MA	1,082,575
City of Boston Acting by and through its PFC by DND	MA	244,529
City of Boston Acting by and through its PFC by DND	MA	104,843
City of Boston Acting by and through its PFC by DND	MA	185,136
City of Boston Acting by and through its PFC by DND	MA	199,892

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
City of Boston Acting by and through its PFC by DND	MA	32,586
City of Boston Acting by and through its PFC by DND	MA	1,723,848
City of Boston Acting by and through its PFC by DND	MA	228,324
City of Boston Acting by and through its PFC by DND	MA	311,311
City of Boston Acting by and through its PFC by DND	MA	44,100
City of Boston Acting by and through its PFC by DND	MA	223,716
City of Boston Acting by and through its PFC by DND	MA	90,185
City of Boston Acting by and through its PFC by DND	MA	435,278
City of Boston Acting by and through its PFC by DND	MA	67,618
City of Boston Acting by and through its PFC by DND	MA	142,176
City of Boston Acting by and through its PFC by DND	MA	206,315
City of Boston Acting by and through its PFC by DND	MA	197,842
City of Boston Acting by and through its PFC by DND	MA	1,094,004
City of Boston Acting by and through its PFC by DND	MA	338,088
City of Boston Acting by and through its PFC by DND	MA	189,034
City of Boston Acting by and through its PFC by DND	MA	146,664
City of Boston Acting by and through its PFC by DND	MA	764,508
City of Boston Acting by and through its PFC by DND	MA	381,876
City of Boston Acting by and through its PFC by DND	MA	188,161
City of Boston Acting by and through its PFC by DND	MA	55,777
City of Boston Acting by and through its PFC by DND	MA	310,701
City of Boston Acting by and through its PFC by DND	MA	217,233
City of Boston Acting by and through its PFC by DND	MA	42,552
City of Boston Acting by and through its PFC by DND	MA	233,856
City of Boston Acting by and through its PFC by DND	MA	530,164
City of Boston Acting by and through its PFC by DND	MA	221,669
City of Boston Acting by and through its PFC by DND	MA	288,363
City of Boston Acting by and through its PFC by DND	MA	234,780
City of Boston Acting by and through its PFC by DND	MA	118,768
City of Boston Acting by and through its PFC by DND	MA	510,118
City of Boston Acting by and through its PFC by DND	MA	350,784
City of Boston Acting by and through its PFC by DND	MA	79,869
City of Boston Acting by and through its PFC by DND	MA	117,331
City of Boston Acting by and through its PFC by DND	MA	735,444
City of Boston Acting by and through its PFC by DND	MA	230,830
City of Boston Acting by and through its PFC by DND	MA	37,010
City of Boston Acting by and through its PFC by DND	MA	187,532
City of Boston Acting by and through its PFC by DND	MA	133,369
City of Boston Acting by and through its PFC by DND	MA	38,976
City of Boston Acting by and through its PFC by DND	MA	28,350
City of Boston Acting by and through its PFC by DND	MA	34,617
City of Boston Acting by and through its PFC by DND	MA	176,010
City of Boston Acting by and through its PFC by DND	MA	511,402
City of Boston Acting by and through its PFC by DND	MA	310,453
City of Boston Acting by and through its PFC by DND	MA	295,645
City of Boston Acting by and through its PFC by DND	MA	194,880
City of Boston Acting by and through its PFC by DND	MA	307,434
City of Boston Acting by and through its PFC by DND	MA	474,531
City of Boston Acting by and through its PFC by DND	MA	382,553
City of Boston Acting by and through its PFC by DND	MA	108,244
City of Boston Acting by and through its PFC by DND	MA	56,889
City of Boston Acting by and through its PFC by DND	MA	48,442
City of Boston Acting by and through its PFC by DND	MA	289,305
City of Boston Acting by and through its PFC by DND	MA	245,814
City of Boston Acting by and through its PFC by DND	MA	388,728
City of Boston Acting by and through its PFC by DND	MA	201,048
City of Boston Acting by and through its PFC by DND	MA	56,883
City of Boston Acting by and through its PFC by DND	MA	1,382,236
City of Boston Acting by and through its PFC by DND	MA	158,632
City of Boston Acting by and through its PFC by DND	MA	313,176
City of Boston Acting by and through its PFC by DND	MA	631,664
City of Boston Acting by and through its PFC by DND	MA	49,392
City of Cambridge, Massachusetts	MA	124,092
City of Cambridge, Massachusetts	MA	45,479
City of Cambridge, Massachusetts	MA	438,573
City of Cambridge, Massachusetts	MA	58,530
City of Cambridge, Massachusetts	MA	14,386
City of Cambridge, Massachusetts	MA	19,527
City of Cambridge, Massachusetts	MA	20,790
City of Cambridge, Massachusetts	MA	33,600
City of Cambridge, Massachusetts	MA	81,632
City of Cambridge, Massachusetts	MA	119,652

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
City of Cambridge, Massachusetts	MA	32,497
City of Cambridge, Massachusetts	MA	169,649
City of Cambridge, Massachusetts	MA	9,916
City of Cambridge, Massachusetts	MA	57,750
City of Cambridge, Massachusetts	MA	137,815
City of Cambridge, Massachusetts	MA	32,640
City of Cambridge, Massachusetts	MA	17,724
City of Cambridge, Massachusetts	MA	28,946
City of Cambridge, Massachusetts	MA	52,605
City of Cambridge, Massachusetts	MA	56,541
City of Cambridge, Massachusetts	MA	171,142
City of Cambridge, Massachusetts	MA	18,480
City of Cambridge, Massachusetts	MA	225,717
City of Cambridge, Massachusetts	MA	60,986
City of Cambridge, Massachusetts	MA	707,545
City of Cambridge, Massachusetts	MA	162,236
City of Cambridge, Massachusetts	MA	52,295
City of Cambridge, Massachusetts	MA	51,042
City of Fall River	MA	32,052
City of Fall River	MA	329,091
City of Fall River	MA	437,880
City of Fall River	MA	76,724
City of Fall River	MA	37,800
City of Fall River	MA	163,497
City of Fall River	MA	347,784
City of Fall River	MA	70,906
City of Fall River	MA	154,614
City of Lawrence	MA	53,345
City of Lawrence	MA	12,416
City of Lawrence	MA	20,895
City of Lawrence	MA	14,962
City of Lowell, Massachusetts	MA	67,350
City of Lowell, Massachusetts	MA	91,567
City of Lowell, Massachusetts	MA	400,894
City of Lowell, Massachusetts	MA	79,742
City of Lowell, Massachusetts	MA	189,283
City of Lowell, Massachusetts	MA	40,325
City of New Bedford	MA	97,884
City of New Bedford	MA	187,933
City of New Bedford	MA	96,819
City of New Bedford	MA	298,069
City of New Bedford	MA	245,063
City of New Bedford	MA	265,079
City of New Bedford	MA	154,157
City of New Bedford	MA	272,490
City of New Bedford	MA	29,524
City of New Bedford	MA	198,609
City of Northampton	MA	80,351
City of Northampton	MA	83,880
City of Northampton	MA	22,312
City of Northampton	MA	51,675
City of Northampton	MA	55,493
City of Northampton	MA	42,018
City of Northampton	MA	100,527
City of Northampton	MA	94,500
City of Northampton	MA	72,450
City of Northampton	MA	106,022
City of Northampton	MA	184,536
City of Northampton	MA	200,529
City of Northampton	MA	242,300
City of Northampton	MA	104,993
City of Quincy, MA	MA	96,891
City of Quincy, MA	MA	193,032
City of Quincy, MA	MA	69,547
City of Quincy, MA	MA	72,588
City of Quincy, MA	MA	932,772
City of Quincy, MA	MA	451,420
City of Quincy, MA	MA	80,390
City of Quincy, MA	MA	350,401
City of Quincy, MA	MA	101,112
City of Quincy, MA	MA	86,509
City of Quincy, MA	MA	498,660

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
City of Quincy, MA	MA	111,484
City of Springfield	MA	96,694
City of Springfield	MA	100,656
City of Springfield	MA	152,428
City of Springfield	MA	217,908
City of Springfield	MA	35,419
City of Springfield	MA	83,880
City of Springfield	MA	134,208
City of Springfield	MA	125,820
City of Springfield	MA	195,574
City of Springfield	MA	203,040
City of Springfield	MA	441,550
City of Springfield	MA	29,732
City of Springfield	MA	118,831
City of Worcester, MA	MA	181,582
City of Worcester, MA	MA	468,226
City of Worcester, MA	MA	291,600
City of Worcester, MA	MA	647,328
City of Worcester, MA	MA	353,375
Commonwealth of Massachusetts	MA	319,668
Commonwealth of Massachusetts	MA	199,137
Commonwealth of Massachusetts	MA	84,000
Commonwealth of Massachusetts	MA	143,604
Commonwealth of Massachusetts	MA	597,336
Commonwealth of Massachusetts	MA	206,820
Commonwealth of Massachusetts	MA	441,336
Commonwealth of Massachusetts	MA	148,380
Commonwealth of Massachusetts	MA	509,284
Commonwealth of Massachusetts	MA	195,236
Commonwealth of Massachusetts	MA	126,000
Commonwealth of Massachusetts	MA	754,605
Commonwealth of Massachusetts	MA	679,680
Commonwealth of Massachusetts	MA	918,583
Commonwealth of Massachusetts	MA	486,803
Commonwealth of Massachusetts	MA	31,500
Commonwealth of Massachusetts	MA	50,484
Commonwealth of Massachusetts	MA	668,185
Commonwealth of Massachusetts	MA	212,976
Commonwealth of Massachusetts	MA	63,689
Commonwealth of Massachusetts	MA	258,788
Commonwealth of Massachusetts	MA	292,224
Commonwealth of Massachusetts	MA	828,456
Commonwealth of Massachusetts	MA	186,597
Community Counseling of Bristol County, Inc	MA	62,169
Community Counseling of Bristol County, Inc	MA	83,522
Community Counseling of Bristol County, Inc	MA	142,339
Community Counseling of Bristol County, Inc	MA	26,683
Community Counseling of Bristol County, Inc	MA	91,618
Community Counseling of Bristol County, Inc	MA	41,269
Community Counseling of Bristol County, Inc	MA	108,954
Community Healthlink, Inc	MA	363,930
Community Healthlink, Inc	MA	246,979
Construct, Inc	MA	41,200
Duffy Health Center, Inc	MA	44,005
Duffy Health Center, Inc	MA	32,886
Emmaus Inc	MA	102,100
Emmaus Inc	MA	67,542
Emmaus Inc	MA	250,725
Family Life Support Center, Inc	MA	136,491
Father Bills & MainSpring, Inc	MA	41,346
Father Bills & MainSpring, Inc	MA	182,895
Father Bills & MainSpring, Inc	MA	87,578
Father Bills & MainSpring, Inc	MA	119,712
Father Bills & MainSpring, Inc	MA	198,752
Haverhill Housing Authority	MA	140,832
Heading Home Inc	MA	69,869
Heading Home Inc	MA	67,662
Heading Home Inc	MA	131,525
Heading Home Inc	MA	69,512
Heading Home Inc	MA	216,409
Heading Home Inc	MA	474,503
Heading Home Inc	MA	71,678

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Housing Assistance Corporation	MA	76,840
Housing Assistance Corporation	MA	48,206
Housing Assistance Corporation	MA	76,550
Housing Assistance Corporation	MA	66,431
Housing Corporation of Arlington	MA	172,592
Housing Families Inc	MA	139,156
Housing Families Inc	MA	127,234
Housing For All Corporation	MA	44,200
Just-A-Start	MA	23,100
Lynn Housing Authority & Neighborhood Development	MA	203,244
Lynn Housing Authority & Neighborhood Development	MA	122,812
Lynn Housing Authority & Neighborhood Development	MA	86,853
Lynn Housing Authority & Neighborhood Development	MA	239,507
Lynn Housing Authority & Neighborhood Development	MA	257,544
Lynn Housing Authority & Neighborhood Development	MA	283,250
Lynn Housing Authority & Neighborhood Development	MA	12,561
Lynn Housing Authority & Neighborhood Development	MA	26,012
Lynn Housing Authority & Neighborhood Development	MA	29,383
Lynn Housing Authority & Neighborhood Development	MA	703,644
Lynn Housing Authority & Neighborhood Development	MA	44,887
Lynn Housing Authority & Neighborhood Development	MA	41,300
Lynn Shelter Association	MA	211,146
Malden Housing Authority	MA	137,880
Mass. Department of Mental Health	MA	220,320
Merrimack Valley Young Men's Christian Organization	MA	80,665
MetroWest Legal Services, Inc	MA	48,506
New Hope Inc	MA	92,235
North Shore Community Action Programs, Inc	MA	142,310
North Shore Community Action Programs, Inc	MA	31,448
Pine Street Inn, Inc	MA	28,000
Provincetown Housing Authority	MA	70,560
Seeds of Hope	MA	88,620
Somerville Community Corporation	MA	16,769
Somerville Homeless Coalition, Inc	MA	407,396
Somerville Homeless Coalition, Inc	MA	163,827
Somerville Homeless Coalition, Inc	MA	131,450
Somerville Homeless Coalition, Inc	MA	194,608
Somerville Homeless Coalition, Inc	MA	9,275
Somerville Homeless Coalition, Inc	MA	40,011
Somerville Homeless Coalition, Inc	MA	230,889
Somerville Housing Authority	MA	128,640
South Coastal Counties Legal Services, Inc	MA	24,937
South Middlesex Opportunity Council	MA	116,150
South Middlesex Opportunity Council	MA	79,128
South Shore Housing Development Corporation	MA	42,000
The Psychological Center, Inc	MA	147,873
The Psychological Center, Inc	MA	88,470
The Second Step, Inc	MA	94,045
The Second Step, Inc	MA	63,344
The Second Step, Inc	MA	216,474
The Second Step, Inc	MA	65,810
Transition House (Family Development Program)	MA	14,073
Tri-City Community Action Program (Tri-CAP)	MA	175,964
Tri-City Community Action Program (Tri-CAP)	MA	183,961
Tri-City Community Action Program (Tri-CAP)	MA	84,205
Turning Point, Inc	MA	218,649
Twin Cities Community Development Corporation	MA	91,018
United Veterans of America, Inc. (dba Soldier On)	MA	155,530
Veterans Northeast Outreach Center, Inc	MA	135,487
Vinfen Corporation	MA	21,912
Vinfen Corporation	MA	28,954
Wayside Youth & Family Support Network	MA	235,821
YWCA of Greater Lawrence, Inc	MA	187,950
Advocates for Homeless Families, Inc	MD	24,008
AIDS Interfaith Residential Services, Inc	MD	185,039
AIDS Interfaith Residential Services, Inc	MD	231,315
AIDS Interfaith Residential Services, Inc	MD	38,800
AIDS Interfaith Residential Services, Inc	MD	107,610
AIDS Interfaith Residential Services, Inc	MD	147,340
Allegany County Human Resources Development Commission, Inc	MD	14,137
Allegany County Human Resources Development Commission, Inc	MD	66,044
Allegany County Human Resources Development Commission, Inc	MD	32,739

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Allegany County Human Resources Development Commission, Inc	MD	68,460
Anne Arundel County, Maryland	MD	54,548
Anne Arundel County, Maryland	MD	171,056
Anne Arundel County, Maryland	MD	57,225
Anne Arundel County, Maryland	MD	329,983
Anne Arundel County, Maryland	MD	129,499
Anne Arundel County, Maryland	MD	315,679
Anne Arundel County, Maryland	MD	41,597
Anne Arundel County, Maryland	MD	252,273
Anne Arundel County, Maryland	MD	70,786
Anne Arundel County, Maryland	MD	56,784
Anne Arundel County, Maryland	MD	57,107
Anne Arundel County, Maryland	MD	113,400
Associated Catholic Charities, Inc	MD	79,198
Baltimore County Dept. of Social Services	MD	15,750
Baltimore County Dept. of Social Services	MD	80,138
Baltimore Mental Health Systems, Inc	MD	247,453
Baltimore Mental Health Systems, Inc	MD	252,874
Baltimore Mental Health Systems, Inc	MD	227,566
Baltimore Mental Health Systems, Inc	MD	369,600
Baltimore Mental Health Systems, Inc	MD	159,600
Baltimore Mental Health Systems, Inc	MD	392,200
Baltimore Mental Health Systems, Inc	MD	342,117
Batlimore County Office of Community Conservation	MD	105,000
Batlimore County Office of Community Conservation	MD	431,727
Batlimore County Office of Community Conservation	MD	168,914
Batlimore County Office of Community Conservation	MD	162,502
Board of County Commissioners of Calvert County, Maryland	MD	18,252
Catholic Charities of the Archdiocese of Washington DC	MD	86,391
Catholic Charities of the Archdiocese of Washington DC	MD	24,245
Catholic Charities of the Archdiocese of Washington DC	MD	76,684
Cecil County Department of Social Services	MD	37,996
City of Baltimore—Mayor's Office	MD	1,001,736
City of Baltimore—Mayor's Office	MD	55,860
City of Baltimore—Mayor's Office	MD	74,001
City of Baltimore—Mayor's Office	MD	135,612
City of Baltimore—Mayor's Office	MD	1,345,848
City of Baltimore—Mayor's Office	MD	55,347
City of Baltimore—Mayor's Office	MD	205,926
City of Baltimore—Mayor's Office	MD	58,776
City of Baltimore—Mayor's Office	MD	584,306
City of Baltimore—Mayor's Office	MD	73,069
City of Baltimore—Mayor's Office	MD	235,900
City of Baltimore—Mayor's Office	MD	41,149
City of Baltimore—Mayor's Office	MD	97,356
City of Baltimore—Mayor's Office	MD	63,125
City of Baltimore—Mayor's Office	MD	175,124
City of Baltimore—Mayor's Office	MD	35,343
City of Baltimore—Mayor's Office	MD	397,793
City of Baltimore—Mayor's Office	MD	78,750
City of Baltimore—Mayor's Office	MD	315,600
City of Baltimore—Mayor's Office	MD	335,087
City of Baltimore—Mayor's Office	MD	116,784
City of Baltimore—Mayor's Office	MD	389,280
City of Baltimore—Mayor's Office	MD	67,554
City of Baltimore—Mayor's Office	MD	875,880
City of Baltimore—Mayor's Office	MD	69,258
City of Baltimore—Mayor's Office	MD	165,152
City of Baltimore—Mayor's Office	MD	23,520
City of Baltimore—Mayor's Office	MD	356,030
City of Baltimore—Mayor's Office	MD	1,467,096
City of Baltimore—Mayor's Office	MD	816,609
City of Baltimore—Mayor's Office	MD	155,548
City of Baltimore—Mayor's Office	MD	488,651
City of Baltimore—Mayor's Office	MD	121,248
City of Baltimore—Mayor's Office	MD	100,247
City of Baltimore—Mayor's Office	MD	308,504
City of Baltimore—Mayor's Office	MD	34,341
City of Baltimore—Mayor's Office	MD	297,461
City of Baltimore—Mayor's Office	MD	113,616
City of Baltimore—Mayor's Office	MD	251,744
City of Baltimore—Mayor's Office	MD	46,235

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
City of Baltimore—Mayor's Office	MD	315,600
City of Baltimore—Mayor's Office	MD	173,250
City of Baltimore—Mayor's Office	MD	32,983
City of Baltimore—Mayor's Office	MD	102,062
City of Baltimore—Mayor's Office	MD	209,400
City of Baltimore—Mayor's Office	MD	113,461
City of Baltimore—Mayor's Office	MD	38,127
City of Baltimore—Mayor's Office	MD	291,244
City of Baltimore—Mayor's Office	MD	60,624
City of Baltimore—Mayor's Office	MD	31,137
City of Baltimore—Mayor's Office	MD	107,116
City of Baltimore—Mayor's Office	MD	100,044
City of Baltimore—Mayor's Office	MD	704,886
City of Baltimore—Mayor's Office	MD	214,025
City of Baltimore—Mayor's Office	MD	45,378
City of Baltimore—Mayor's Office	MD	136,404
City of Baltimore—Mayor's Office	MD	166,656
City of Baltimore—Mayor's Office	MD	231,420
City of Baltimore—Mayor's Office	MD	109,032
City of Baltimore—Mayor's Office	MD	50,496
City of Baltimore—Mayor's Office	MD	252,480
City of Baltimore—Mayor's Office	MD	114,805
City of Baltimore—Mayor's Office	MD	350,352
City of Baltimore—Mayor's Office	MD	363,849
City of Baltimore—Mayor's Office	MD	1,421,238
City of Baltimore—Mayor's Office	MD	43,579
City of Baltimore—Mayor's Office	MD	1,895,208
City of Baltimore—Mayor's Office	MD	50,022
City of Baltimore—Mayor's Office	MD	611,913
City of Baltimore—Mayor's Office	MD	586,560
City of Baltimore—Mayor's Office	MD	98,780
City of Frederick	MD	65,895
City of Frederick	MD	135,536
City of Gaithersburg-Wells/Robertson House	MD	128,247
Community Assistance Network, Inc	MD	174,593
Crossroads Community, Inc	MD	26,888
Crossroads Community, Inc	MD	13,584
Crossroads Community, Inc	MD	192,763
Crossroads Community, Inc	MD	39,019
Friends for Neighborhood Progress, Inc	MD	25,830
Friends for Neighborhood Progress, Inc	MD	21,852
Garrett County Community Action Committee, Inc	MD	9,843
Garrett County Community Action Committee, Inc	MD	12,974
Garrett County Community Action Committee, Inc	MD	52,473
Garrett County Community Action Committee, Inc	MD	5,568
Garrett County Community Action Committee, Inc	MD	153,305
Harford County, Maryland	MD	56,047
Harford County, Maryland	MD	48,358
Harford County, Maryland	MD	20,111
Harford County, Maryland	MD	83,944
Harford County, Maryland	MD	10,185
Harford County, Maryland	MD	71,263
Harford County, Maryland	MD	10,585
Harford County, Maryland	MD	9,273
Harford County, Maryland	MD	10,244
Harford County, Maryland	MD	83,975
Harford County, Maryland	MD	89,770
Heartly House, Inc	MD	35,074
Housing Authority of St. Mary's County, MD	MD	17,479
Housing Authority of St. Mary's County, MD	MD	40,630
Housing Authority of St. Mary's County, MD	MD	42,451
Housing Authority of St. Mary's County, MD	MD	34,908
Housing Authority of St. Mary's County, MD	MD	17,449
Housing Authority of St. Mary's County, MD	MD	174,554
Housing Authority of St. Mary's County, MD	MD	70,633
Housing Authority of St. Mary's County, MD	MD	10,574
Housing Authority of St. Mary's County, MD	MD	110,360
Housing Authority of St. Mary's County, MD	MD	11,471
HOUSING OPPORTUNITIES COMMISSION	MD	2,307,775
HOUSING OPPORTUNITIES COMMISSION	MD	262,956
HOUSING OPPORTUNITIES COMMISSION	MD	217,406
HOUSING OPPORTUNITIES COMMISSION	MD	79,533

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
HOUSING OPPORTUNITIES COMMISSION	MD	653,784
Howard County Government	MD	130,335
Howard County Government	MD	70,504
Howard County Government	MD	236,433
Howard County Government	MD	52,363
Howard County Mental Health Authority	MD	171,420
Human Services Developmental Corporation, Inc	MD	73,776
Human Services Programs of Carroll County, Inc	MD	44,000
Human Services Programs of Carroll County, Inc	MD	86,135
Human Services Programs of Carroll County, Inc	MD	42,792
Human Services Programs of Carroll County, Inc	MD	15,240
Human Services Programs of Carroll County, Inc	MD	65,402
Human Services Programs of Carroll County, Inc	MD	7,668
INNterim Housing Corporation	MD	248,745
Interfaith Works	MD	235,903
JHP, Inc	MD	228,186
JHP, Inc	MD	136,761
Laurel Advocacy and Referral Services, Inc	MD	185,770
Laurel Advocacy and Referral Services, Inc	MD	47,265
Laurel Advocacy and Referral Services, Inc	MD	158,815
Maryland Department of Health and Mental Hygiene	MD	615,228
Maryland Department of Health and Mental Hygiene	MD	156,744
Maryland Department of Health and Mental Hygiene	MD	323,088
Maryland Department of Health and Mental Hygiene	MD	273,012
Maryland Department of Health and Mental Hygiene	MD	104,088
Maryland Department of Health and Mental Hygiene	MD	61,920
Maryland Department of Health and Mental Hygiene	MD	122,988
Maryland Department of Health and Mental Hygiene	MD	1,189,080
Maryland Department of Health and Mental Hygiene	MD	126,060
Maryland Department of Health and Mental Hygiene	MD	270,888
Maryland Department of Health and Mental Hygiene	MD	145,176
Maryland Department of Health and Mental Hygiene	MD	63,252
Maryland Department of Health and Mental Hygiene	MD	178,548
Maryland Department of Health and Mental Hygiene	MD	47,244
Maryland Department of Health and Mental Hygiene	MD	274,848
Maryland Department of Health and Mental Hygiene	MD	46,404
Maryland Department of Health and Mental Hygiene	MD	219,816
Maryland Department of Health and Mental Hygiene	MD	237,492
Maryland Department of Health and Mental Hygiene	MD	86,976
Mid-Shore Mental Health Systems, Inc	MD	59,306
Mid-Shore Mental Health Systems, Inc	MD	182,532
Montgomery Avenue Women's Center	MD	138,183
Montgomery County Coalition for the Homeless, Inc	MD	131,260
Montgomery County Coalition for the Homeless, Inc	MD	134,433
Montgomery County Coalition for the Homeless, Inc	MD	511,058
Montgomery County Coalition for the Homeless, Inc	MD	826,569
Montgomery County Coalition for the Homeless, Inc	MD	359,232
Nehemiah House, Inc	MD	57,295
People Encouraging People, Inc	MD	313,693
Prince George's County, Maryland	MD	116,193
Prince George's County, Maryland	MD	1,289,000
Prince George's County, Maryland	MD	382,783
Rehabilitation Systems, Inc	MD	234,720
Rehabilitation Systems, Inc	MD	368,004
Rehabilitation Systems, Inc	MD	132,958
Somerset County Health Department	MD	13,447
Somerset County Health Department	MD	26,929
Somerset County Health Department	MD	13,866
Somerset County Health Department	MD	221,433
Somerset County Health Department	MD	14,076
Somerset County Health Department	MD	421,857
The Dwelling Place, Inc	MD	271,956
The National Center for Children and Families	MD	640,658
United Communities Against Poverty, Inc. (UCAP)	MD	194,852
United Communities Against Poverty, Inc. (UCAP)	MD	158,919
United Communities Against Poverty, Inc. (UCAP)	MD	161,403
Washington County Community Action Council, Inc	MD	56,367
Washington County Community Action Council, Inc	MD	198,729
Washington County Department of Social Services	MD	45,839
YMCA of Cumberland	MD	70,350
YMCA of Cumberland	MD	369,536
Avesta Housing Development Corporation	ME	304,266

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Bread of Life Ministries, Inc	ME	73,500
Bread of Life Ministries, Inc	ME	12,600
City of Bangor	ME	296,604
City of Bangor	ME	346,296
City of Bangor	ME	78,240
City of Portland	ME	15,443
City of Portland	ME	70,016
City of Portland	ME	158,125
Community Health and Counseling Services	ME	18,599
Community Housing of Maine, Inc	ME	19,635
Community Housing of Maine, Inc	ME	283,253
Counseling Services, Inc	ME	64,410
Hope and Justice Project, Inc	ME	27,251
Hope House Penobcot Community Health Care	ME	9,975
Hope House Penobcot Community Health Care	ME	19,539
Kennebec Behavioral Health	ME	32,838
LearningWorks	ME	70,652
Maine State Housing Authority	ME	163,800
Maine State Housing Authority	ME	22,715
Maine State Housing Authority	ME	154,959
Maine State Housing Authority	ME	66,431
Maine State Housing Authority	ME	27,969
Maine State Housing Authority	ME	16,758
MAPS	ME	71,355
New Beginnings Inc	ME	167,116
OHI	ME	27,900
Shaw House	ME	16,373
Shaw House	ME	95,550
Shaw House	ME	109,068
State of Maine, Department of Health and Human Services	ME	104,724
State of Maine, Department of Health and Human Services	ME	207,696
State of Maine, Department of Health and Human Services	ME	1,264,812
State of Maine, Department of Health and Human Services	ME	208,860
State of Maine, Department of Health and Human Services	ME	817,800
State of Maine, Department of Health and Human Services	ME	23,004
State of Maine, Department of Health and Human Services	ME	559,692
State of Maine, Department of Health and Human Services	ME	1,526,304
State of Maine, Department of Health and Human Services	ME	30,672
State of Maine, Department of Health and Human Services	ME	103,800
State of Maine, Department of Health and Human Services	ME	1,551,432
State of Maine, Department of Health and Human Services	ME	457,320
State of Maine, Department of Health and Human Services	ME	31,140
State of Maine, Department of Health and Human Services	ME	360,084
Tedford Housing	ME	6,825
Tedford Housing	ME	16,519
Washington County Association for Retarded Citizens	ME	28,927
York County Shelter Programs, Inc	ME	33,238
York County Shelter Programs, Inc	ME	99,174
York County Shelter Programs, Inc	ME	111,127
Youth Alternatives Ingraham, Inc	ME	307,099
Youth Alternatives Ingraham, Inc	ME	126,936
Youth Alternatives Ingraham, Inc	ME	82,356
Alger Marquette Community Action Board	MI	52,207
Allegan County Community Mental Health Services	MI	84,800
Alternative Community Living, Inc	MI	33,469
Alternative Community Living, Inc	MI	36,211
Alternatives For Girls	MI	111,726
Ann Arbor Housing Commission	MI	66,840
Ann Arbor Housing Commission	MI	218,376
Ann Arbor Housing Commission	MI	52,200
Ann Arbor Housing Commission	MI	201,636
Ann Arbor Housing Commission	MI	278,400
Ann Arbor Housing Commission	MI	38,820
Avalon Housing, Inc	MI	83,334
Avalon Housing, Inc	MI	86,534
Bay Area Women's Center	MI	60,483
Bay Area Women's Center	MI	106,488
Branch County Coalition Against Domestic Violence	MI	14,422
Branch County Coalition Against Domestic Violence	MI	20,700
Capital Area Community Services, Inc	MI	106,791
Capital Area Community Services, Inc	MI	93,809
Cass Community Social Services, Inc	MI	188,724

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Cass Community Social Services, Inc	MI	257,272
Cass Community Social Services, Inc	MI	420,000
Catholic Family Services	MI	104,240
Catholic Social Services of Wayne County	MI	355,618
Catholic Social Services of Wayne County	MI	181,417
Center for Women in Transition	MI	23,220
Center for Women in Transition	MI	81,736
Center for Women in Transition	MI	85,795
Center for Women in Transition	MI	38,614
Central Territorial of the Salvation Army	MI	228,488
Central Territorial of the Salvation Army	MI	249,854
Central Territorial of the Salvation Army	MI	231,583
Charter County of Wayne	MI	127,813
Charter County of Wayne	MI	297,216
Charter County of Wayne	MI	40,560
Charter County of Wayne	MI	287,892
Charter County of Wayne	MI	401,246
Charter County of Wayne	MI	214,404
Charter County of Wayne	MI	453,143
Charter County of Wayne	MI	112,665
City of Lansing	MI	385,826
City of Lansing	MI	258,768
City of Lansing	MI	62,842
City of Lansing	MI	62,842
City of Lansing	MI	172,900
City of Lansing	MI	39,334
City of Lansing	MI	46,115
City of Lansing	MI	149,999
City of Lansing	MI	24,000
City of Lansing	MI	97,081
City of Lansing	MI	585,090
City of Melvindale	MI	254,580
Coalition On Temporary Shelter	MI	135,338
Coalition On Temporary Shelter	MI	84,979
Coalition On Temporary Shelter	MI	68,259
Coalition On Temporary Shelter	MI	105,546
Coalition On Temporary Shelter	MI	660,686
Coalition On Temporary Shelter	MI	308,083
Common Ground	MI	84,546
Common Ground	MI	132,999
Common Ground	MI	105,000
Common Ground	MI	82,761
Community & Home Supports, Inc	MI	680,524
Community Action Agency	MI	269,267
Community Action Agency	MI	54,932
Community Action Agency	MI	190,243
Community Action Agency	MI	56,131
Community Care Services	MI	143,119
Community Housing Network, Inc	MI	58,180
Community Housing Network, Inc	MI	161,124
Community Housing Network, Inc	MI	71,554
Community Housing Network, Inc	MI	330,122
Community Housing Network, Inc	MI	69,737
Community Housing Network, Inc	MI	326,432
Community Housing Network, Inc	MI	75,441
Community Housing Network, Inc	MI	50,199
Community Housing Network, Inc	MI	209,365
Community Housing Network, Inc	MI	168,253
Community Housing Network, Inc	MI	212,524
Community Housing Network, Inc	MI	149,689
Community Housing Network, Inc	MI	319,414
Community Housing Network, Inc	MI	100,006
Community Housing Network, Inc	MI	122,665
Community Housing Network, Inc	MI	144,435
Community Housing Network, Inc	MI	206,398
Community Housing Network, Inc	MI	267,996
Community Mental Health Services of Muskegon County	MI	102,888
Community Mental Health Services of Muskegon County	MI	16,598
Community Rebuilders	MI	260,310
Community Rebuilders	MI	256,080
Community Rebuilders	MI	245,680
Community Rebuilders	MI	607,695

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Comprehensive Youth Services	MI	29,820
Cory Place, Inc	MI	136,666
County of Kent	MI	779,412
County of Kent	MI	383,424
County of Kent	MI	145,440
County of Ottawa	MI	218,943
County of Ottawa	MI	31,271
County of Ottawa	MI	17,585
County of Ottawa	MI	96,996
Covenant House Michigan	MI	400,233
Detroit Central City CMH, Inc	MI	1,009,997
Detroit Rescue Mission Ministries	MI	622,667
Detroit Rescue Mission Ministries	MI	1,057,721
Detroit Rescue Mission Ministries	MI	448,436
Detroit Rescue Mission Ministries	MI	543,532
Detroit Rescue Mission Ministries	MI	493,646
Detroit Rescue Mission Ministries	MI	426,160
Detroit Rescue Mission Ministries	MI	759,593
Detroit Rescue Mission Ministries	MI	406,740
Detroit Rescue Mission Ministries	MI	220,333
Dwelling Place of Grand Rapids, Inc	MI	100,935
Eastern Upper Peninsula Veterans Foundation	MI	115,166
First Step: Western Wayne County Project on Domestic Assault	MI	36,750
First Step: Western Wayne County Project on Domestic Assault	MI	47,580
Foundation for Mental Health-Grand Traverse/Leelanau	MI	58,708
Foundation for Mental Health-Grand Traverse/Leelanau	MI	31,500
Foundation for Mental Health-Grand Traverse/Leelanau	MI	42,105
Foundation for Mental Health-Grand Traverse/Leelanau	MI	12,588
Foundation for Mental Health-Grand Traverse/Leelanau	MI	60,170
Freedom House Detroit	MI	383,543
Genesee County Community Action Resource Department	MI	171,708
Genesis Non-Profit Housing Corporation	MI	32,550
Genesis Non-Profit Housing Corporation	MI	26,250
Genesis Non-Profit Housing Corporation	MI	36,750
Good Samaritan Ministries	MI	402,066
Goodwill Industries of Northern Michigan, Inc	MI	25,620
Goodwill Industries of Northern Michigan, Inc	MI	51,923
Grand Rapids Housing Commission	MI	120,086
Grand Rapids Housing Commission	MI	121,568
Grand Rapids Housing Commission	MI	226,900
Grand Rapids Housing Commission	MI	118,009
Haven of Rest Ministries Inc	MI	175,166
Haven of Rest Ministries Inc	MI	86,758
Heartside Nonprofit Housing Corporation	MI	116,667
Heartside Nonprofit Housing Corporation	MI	63,000
Homeless Action Network of Detroit	MI	190,273
Housing Resources, Inc. of Kalamazoo County	MI	317,960
Housing Resources, Inc. of Kalamazoo County	MI	17,168
Housing Resources, Inc. of Kalamazoo County	MI	47,862
Housing Services for Eaton County	MI	49,875
Housing Services for Eaton County	MI	13,967
Housing Services for Eaton County	MI	197,007
Human Development Commission	MI	244,603
Inner City Christian Federation	MI	38,810
Jewish Vocational Service	MI	816,441
Kalamazoo Community Mental Health & Substance Abuse Services	MI	116,428
Kalamazoo Community Mental Health & Substance Abuse Services	MI	51,972
Kalamazoo Community Mental Health & Substance Abuse Services	MI	299,401
Kalamazoo Community Mental Health & Substance Abuse Services	MI	258,648
Kalamazoo Community Mental Health & Substance Abuse Services	MI	38,149
Kalamazoo Community Mental Health & Substance Abuse Services	MI	58,079
Kalamazoo Community Mental Health & Substance Abuse Services	MI	58,052
Kalamazoo Community Mental Health & Substance Abuse Services	MI	38,803
Kalamazoo Community Mental Health & Substance Abuse Services	MI	109,113
Kalamazoo County Public Housing Commission	MI	37,596
Lenawee Emergency and Affordable Housing Corporation	MI	3,000
Lenawee Emergency and Affordable Housing Corporation	MI	32,780
Lenawee Emergency and Affordable Housing Corporation	MI	86,511
Lighthouse of Oakland County, Inc	MI	171,337
Lighthouse of Oakland County, Inc	MI	100,762
Lighthouse of Oakland County, Inc	MI	107,716
Lighthouse of Oakland County, Inc	MI	103,106

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Lighthouse of Oakland County, Inc	MI	203,741
Lighthouse of Oakland County, Inc	MI	76,650
Living The Principles, Inc	MI	313,713
Livingston County Community Mental Health Authority	MI	67,553
Lutheran Social Services of Michigan	MI	76,987
Lutheran Social Services of Michigan	MI	12,223
Lutheran Social Services of Wisconsin and Upper Michigan, In	MI	89,209
Lutheran Social Services of Wisconsin and Upper Michigan, In	MI	104,307
Macomb County Community Mental Health	MI	22,816
Macomb Homeless Coalition	MI	29,919
Macomb Homeless Coalition	MI	28,890
Mariners Inn	MI	289,004
Mariners Inn	MI	132,235
Mariners Inn	MI	243,585
Metro Community Development	MI	281,821
Metro Community Development	MI	381,556
Metro Community Development, Inc	MI	124,287
Metro Community Development, Inc	MI	205,542
Metro Community Development, Inc	MI	247,570
Metro Community Development, Inc	MI	28,250
Metro Community Development, Inc	MI	89,577
Metro Community Development, Inc	MI	50,269
Metro Community Development, Inc	MI	231,538
Metro Community Development, Inc	MI	343,555
Metro Community Development, Inc	MI	61,518
Metro Community Development, Inc	MI	24,749
Metro Community Development, Inc	MI	66,247
Michigan Ability Partners	MI	51,100
Michigan Ability Partners	MI	403,071
Michigan Ability Partners	MI	41,316
Michigan Department of Community Health	MI	2,142,744
Michigan Department of Community Health	MI	238,820
Michigan Department of Community Health	MI	214,855
Michigan Department of Community Health	MI	338,640
Michigan Department of Community Health	MI	134,208
Michigan Department of Community Health	MI	185,136
Michigan Department of Community Health	MI	703,649
Michigan Department of Community Health	MI	317,400
Michigan Department of Community Health	MI	362,827
Michigan Department of Community Health	MI	165,636
Michigan Department of Community Health	MI	510,980
Michigan Department of Community Health	MI	248,724
Michigan Department of Community Health	MI	40,560
Michigan Department of Community Health	MI	170,736
Michigan Department of Community Health	MI	180,108
Michigan Department of Community Health	MI	154,128
Michigan Department of Community Health	MI	178,644
Michigan Department of Community Health	MI	340,104
Michigan Department of Human Services	MI	322,507
Michigan Department of Human Services	MI	414,918
Michigan Department of Human Services	MI	537,640
Michigan Department of Human Services	MI	870,274
Michigan Department of Human Services	MI	117,454
Michigan State Housing Development Authority	MI	640,500
Michigan Veterans Foundation	MI	709,836
Monroe County Opportunity Program	MI	102,741
Neighborhood Service Organization	MI	1,900,000
Oakland Livingston Human Service Agency	MI	16,080
Oakland Livingston Human Service Agency	MI	16,687
Oakland Livingston Human Service Agency	MI	25,083
Oakland Livingston Human Service Agency	MI	8,364
Oakland Livingston Human Service Agency	MI	11,162
Ozone House, Inc	MI	112,157
Peckham, Inc	MI	146,877
Perfecting Community Development Corporation	MI	50,818
Positive Images	MI	700,009
POWER Inc (People-Organized-Working-Evolving-Reaching)	MI	168,871
Relief After Violent Encounter—Ionia/Montcalm, Inc	MI	57,833
S.A.F.E. Place	MI	85,000
Sacred Heart Rehabilitation Center, Inc	MI	194,214
Safe Horizons	MI	214,539
Saginaw County Community Mental Health Authority	MI	70,620

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Saginaw County Community Mental Health Authority	MI	209,352
Saginaw County Community Mental Health Authority	MI	122,448
Saginaw County Youth Protection Council	MI	134,212
Saginaw County Youth Protection Council	MI	39,892
Saginaw County Youth Protection Council	MI	96,304
Saginaw Housing Commission	MI	158,880
Saginaw Housing Commission	MI	32,100
Saginaw Housing Commission	MI	32,100
Saginaw Housing Commission	MI	75,000
Saginaw Housing Commission	MI	48,504
Sault Ste Marie Housing Commission	MI	168,000
Shelter, Inc	MI	44,241
Simon House	MI	88,674
SIREN/Eaton Shelter, Inc	MI	278,739
SOS Community Services, Inc	MI	252,455
SOS Community Services, Inc	MI	1,182,579
SOS Community Services, Inc	MI	395,974
SOS Community Services, Inc	MI	433,994
Southwest Housing Solutions	MI	129,539
Southwest Housing Solutions	MI	202,978
Staircase Youth Services. Inc	MI	101,963
Summit POinte	MI	67,936
Sunrise Centre	MI	62,359
The Salvation Army Eastern Michigan Division Harbor Light	MI	466,464
Training and Treatment Innovations, Inc	MI	115,054
Training and Treatment Innovations, Inc	MI	151,532
Training and Treatment Innovations, Inc	MI	109,192
Training and Treatment Innovations, Inc	MI	150,051
Training and Treatment Innovations, Inc	MI	112,876
Training and Treatment Innovations, Inc	MI	118,144
Travelers Aid Society of Metropolitan Detroit	MI	80,655
Travelers Aid Society of Metropolitan Detroit	MI	213,300
Travelers Aid Society of Metropolitan Detroit	MI	938,985
Travelers Aid Society of Metropolitan Detroit	MI	222,828
Travelers Aid Society of Metropolitan Detroit	MI	867,982
Underground Railroad Inc	MI	115,746
Underground Railroad Inc	MI	152,786
Underground Railroad Inc	MI	96,966
United Community Housing Coalition	MI	569,351
Wayne County Neighborhood Legal Services dba NLSM	MI	335,863
Wayne County Neighborhood Legal Services dba NLSM	MI	768,090
Wayne Metropolitan Community Action Agency	MI	280,181
Wayne Metropolitan Community Action Agency	MI	369,538
Wayne Metropolitan Community Action Agency	MI	102,224
Wayne Metropolitan Community Action Agency	MI	119,279
Wayne Metropolitan Community Action Agency	MI	89,949
West Michigan Therapy	MI	62,000
West Michigan Therapy	MI	44,352
West Michigan Therapy	MI	234,168
West Michigan Therapy	MI	13,333
Women Empowering Women, Inc	MI	59,219
Women's Resource Center for the Grand Traverse Area	MI	25,752
Women's Resource Center for the Grand Traverse Area	MI	29,517
Women's Resource Center for the Grand Traverse Area	MI	133,875
YWCA West Central Michigan	MI	391,898
Aeon (formerly Central Community Housing Trust)	MN	236,803
Aeon (formerly Central Community Housing Trust)	MN	77,003
Alliance Housing Inc	MN	206,557
American Indian Community Development Corporation	MN	81,111
American Indian Community Housing Organization	MN	20,483
American Indian Community Housing Organization	MN	39,157
Amherst H. Wilder Foundation	MN	954,260
Amherst H. Wilder Foundation	MN	18,000
Amherst H. Wilder Foundation	MN	19,999
Amherst H. Wilder Foundation	MN	20,554
Amherst H. Wilder Foundation	MN	49,994
Amherst H. Wilder Foundation	MN	25,000
Amherst H. Wilder Foundation	MN	5,756
Amherst H. Wilder Foundation	MN	42,649
Amherst H. Wilder Foundation	MN	62,069
Amherst H. Wilder Foundation	MN	32,510
Amherst H. Wilder Foundation	MN	43,341

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Amherst H. Wilder Foundation	MN	5,829
Arrowhead Economic Opportunity Agency	MN	51,143
Arrowhead Economic Opportunity Agency	MN	26,276
Arrowhead Economic Opportunity Agency	MN	20,600
Bi-County Community Action Programs, Inc	MN	78,128
Bi-County Community Action Programs, Inc	MN	65,848
Blue Earth County	MN	137,544
Bluff Country Family Resources, Inc	MN	35,332
Breaking Free, Inc	MN	63,111
Breaking Free, Inc	MN	93,600
Cabrini Partnership	MN	183,077
Carver County Community Development Agency	MN	100,620
Catholic Charities of the Archdiocese of St. Paul and Minnea	MN	514,133
Center City Housing Corp	MN	39,921
Center City Housing Corp	MN	126,712
Center City Housing Corp	MN	143,000
Center City Housing Corp	MN	200,000
Center City Housing Corp	MN	70,331
Center City Housing Corp	MN	61,733
Center of Human Environment	MN	38,843
Central MN Re-Entry Project	MN	65,862
Christian Restoration Services	MN	60,113
CommonBond Communities	MN	36,234
CommonBond Communities	MN	85,793
Community Involvement Programs	MN	25,479
County of Scott	MN	186,720
Dakota County	MN	410,844
Dakota County CDA	MN	233,028
East Metro Women's Council	MN	67,814
Elim Transitional Housing, Inc	MN	13,983
Elim Transitional Housing, Inc	MN	33,101
Elim Transitional Housing, Inc	MN	152,325
Emerge Community Development	MN	573,312
Emerge Community Development	MN	128,625
Emma Norton Services	MN	136,212
Emma Norton Services	MN	71,251
Freeport West, Inc	MN	242,886
Freeport West, Inc	MN	412,619
GRACE House of Itasca County	MN	24,717
Grant County	MN	95,040
Grant County	MN	16,920
Hearth Connection	MN	69,204
Hearth Connection	MN	185,976
Hearth Connection	MN	26,724
Heartland Community Action Agency, Inc	MN	90,585
Heartland Community Action Agency, Inc	MN	61,857
Hennepin County	MN	503,868
Hennepin County	MN	347,548
Hennepin County	MN	228,300
Hennepin County	MN	600,600
Housing & Redevelopment Authority In & For the City of Will	MN	61,392
Housing & Redevelopment Authority In & For the City of Will	MN	23,705
Housing & Redevelopment Authority of Clay County	MN	55,092
Housing & Redevelopment Authority of Clay County	MN	17,455
Housing & Redevelopment Authority of Clay County	MN	56,666
Housing & Redevelopment Authority of Clay County	MN	182,977
Housing & Redevelopment Authority of Duluth, MN	MN	100,512
Housing & Redevelopment Authority of Itasca County	MN	55,368
Housing & Redevelopment Authority of St. Cloud, MN	MN	26,880
Housing and Redevelopment Authority of St. Cloud, MN	MN	166,608
Housing Authority of St. Louis Park	MN	64,020
Housing Authority of St. Louis Park	MN	120,012
Housing Authority of St. Louis Park	MN	31,008
Human Development Center	MN	74,263
Human Development Center	MN	73,416
Human Development Center	MN	16,417
Human Services, Inc., in Washington County Minnesota	MN	41,874
Human Services, Inc., in Washington County Minnesota	MN	52,701
Kootasca Community Action	MN	32,019
Lakes & Prairies Community Action Partnership, Inc	MN	47,697
Lakes & Prairies Community Action Partnership, Inc	MN	21,376
Life House, Inc	MN	19,011

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Life House, Inc	MN	49,260
LivingWorks Ventures	MN	55,999
Lutheran Social Service of Minnesota	MN	166,023
Lutheran Social Service of Minnesota	MN	119,464
Lutheran Social Service of Minnesota	MN	47,184
Mental Health Resources, Inc	MN	173,315
Mental Health Resources, Inc	MN	359,042
Mental Health Resources, Inc	MN	26,402
Metropolitan Council, Minnesota	MN	549,000
Metropolitan Council, Minnesota	MN	806,052
Metropolitan Council, Minnesota	MN	1,373,172
Metropolitan Council, Minnesota	MN	228,012
Minnesota Assistance Council for Veterans	MN	111,330
Minnesota Assistance Council for Veterans	MN	58,889
Minnesota Assistance Council for Veterans	MN	26,602
Minnesota Assistance Council for Veterans	MN	152,250
Model Cities of St. Paul, Inc	MN	216,857
New Foundations, Inc	MN	298,090
New Pathways, Inc	MN	89,292
New Pathways, Inc	MN	105,265
Northwestern Mental Health Center, Inc	MN	47,400
Olmsted County Community Services	MN	141,588
Olmsted County Housing & Redevelopment Authority	MN	118,656
Otter Tail-Wadena Community Action Council, Inc	MN	66,026
Our Saviour's Outreach Ministries	MN	69,905
Partners for Affordable Housing	MN	11,522
People Incorprated	MN	64,426
Perspectives, Inc	MN	171,499
Perspectives, Inc	MN	171,173
Plymouth Church Neighborhood Foundation	MN	267,946
Ramsey County	MN	387,264
Ramsey County	MN	520,524
Range Mental Health Center, Inc	MN	38,638
Range Mental Health Center, Inc	MN	41,312
Range Transitional Housing, Inc	MN	236,828
Range Transitional Housing, Inc	MN	91,432
Range Transitional Housing, Inc	MN	133,317
RESOURCE, Inc	MN	583,903
Rice County Housing and Redevelopment Authority	MN	66,912
RS Eden	MN	45,486
RS Eden	MN	149,100
Rum River Health Services, Inc	MN	50,250
Ruths House of Hope Inc	MN	102,494
Safe Haven Shelter for Youth	MN	26,889
Scott-Carver-Dakota CAP Agency, Inc	MN	65,033
Scott-Carver-Dakota CAP Agency, Inc	MN	18,162
Scott-Carver-Dakota CAP Agency, Inc	MN	54,928
Scott-Carver-Dakota CAP Agency, Inc	MN	23,230
Scott-Carver-Dakota CAP Agency, Inc	MN	10,257
Simpson Housing Services, Inc	MN	33,510
Simpson Housing Services, Inc	MN	143,091
Simpson Housing Services, Inc	MN	40,765
South Metro Human Services	MN	366,735
Southwestern Mental Health Center	MN	134,766
Steele County Transitional Housing, Inc	MN	23,751
The Evergreen House, Inc	MN	77,048
The Salvation Army	MN	85,575
The Salvation Army	MN	246,784
The Salvation Army	MN	145,149
The Salvation Army	MN	121,817
The Salvation Army	MN	333,577
The Salvation Army	MN	88,098
The Salvation Army	MN	145,166
The Salvation Army	MN	45,108
The Salvation Army	MN	50,239
Theresa Living Center	MN	54,912
Theresa Living Center	MN	84,650
Three Rivers Community Action, Inc	MN	175,915
Three Rivers Community Action, Inc	MN	149,665
Tubman	MN	97,085
Violence Intervention Project	MN	21,249
Violence Intervention Project	MN	29,300

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Virginia MN HRA	MN	239,280
Volunteers of America of Minnesota	MN	103,477
Washington County HRA	MN	122,952
Washington County HRA	MN	91,344
Wings Family Supportive Services, Inc	MN	42,519
Wings Family Supportive Services, Inc	MN	56,961
Young Women's Christian Association	MN	16,275
Young Women's Christian Association of St. Paul MN	MN	80,585
Zion Originalted Outreach Ministry	MN	75,185
Benilde Hall, Inc	MO	100,380
Benilde Hall, Inc	MO	51,350
Catholic Charities of Kansas City-St. Joseph, Inc	MO	135,281
Catholic Charities of Kansas City-St. Joseph, Inc	MO	136,591
Catholic Charities of Kansas City-St. Joseph, Inc	MO	268,143
Catholic Charities of Kansas City-St. Joseph, Inc	MO	95,107
Catholic Charities of Kansas City-St. Joseph, Inc	MO	470,411
Catholic Charities of Kansas City-St. Joseph, Inc	MO	69,338
Catholic Charities of Kansas City-St. Joseph, Inc	MO	216,262
Catholic Charities of Kansas City-St. Joseph, Inc	MO	175,133
Catholic Charities of Kansas City-St. Joseph, Inc	MO	219,008
Church Army, Inc	MO	68,906
City of Kansas City, Missouri	MO	350,172
City of Kansas City, Missouri	MO	125,890
City of Kansas City, Missouri	MO	24,856
City of Kansas City, Missouri	MO	48,300
City of Kansas City, Missouri	MO	133,891
City of Kansas City, Missouri	MO	32,935
City of Kansas City, Missouri	MO	199,399
City of Kansas City, Missouri	MO	114,450
City of Kansas City, Missouri	MO	36,131
City of St. Joseph	MO	44,924
City of St. Louis	MO	158,811
City of St. Louis	MO	57,790
City of St. Louis	MO	78,465
City of St. Louis	MO	176,705
City of St. Louis	MO	261,450
City of St. Louis	MO	599,564
City of St. Louis	MO	752,684
City of St. Louis	MO	179,467
City of St. Louis	MO	304,722
City of St. Louis	MO	435,301
City of St. Louis	MO	288,582
City of St. Louis	MO	211,332
City of St. Louis	MO	241,010
City of St. Louis	MO	298,832
City of St. Louis	MO	528,764
City of St. Louis	MO	198,278
City of St. Louis	MO	101,991
City of St. Louis	MO	239,053
City of St. Louis	MO	766,669
City of St. Louis	MO	200,586
Columbia Housing Authority	MO	338,088
Community Caring Council	MO	186,389
Community Council of St. Charles County	MO	67,679
Community LINC	MO	110,058
Community Missions Corporation	MO	187,278
Crider Health Center	MO	153,153
Delta Area Economic Opportunity Corporation	MO	149,719
Delta Area Economic Opportunity Corporation	MO	116,657
Economic Security Corporation of Southwest Area	MO	68,603
Economic Security Corporation of Southwest Area	MO	37,426
Economic Security Corporation of Southwest Area	MO	64,088
Economic Security Corporation of Southwest Area	MO	38,376
Employment Connection	MO	350,457
Epworth Children & Family Services, Inc	MO	1,044,709
Families Assisted In Transitional Housing, Inc	MO	43,647
Family Counseling Center, Inc	MO	135,780
Family Counseling Center, Inc	MO	120,003
Family Counseling Center, Inc	MO	137,627
Family Self Help Center Inc. d/b/a Lafayette House	MO	63,000
High Hope Employment Services, Inc	MO	74,033
High Hope Employment Services, Inc	MO	42,179

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Jasper County Public Housing Agency	MO	56,676
Johnson County HELP	MO	110,500
Mental Health America of the Heartland	MO	64,099
Mid America Assistance Coalition	MO	43,358
Missouri Association for Social Welfare	MO	110,794
Missouri Department of Mental Health	MO	1,699,464
Missouri Department of Mental Health	MO	137,496
Missouri Department of Mental Health	MO	120,888
Missouri Department of Mental Health	MO	83,088
Missouri Department of Mental Health	MO	688,548
Missouri Department of Mental Health	MO	307,860
Missouri Department of Mental Health	MO	183,240
Missouri Department of Mental Health	MO	212,880
Missouri Department of Mental Health	MO	113,628
Missouri Department of Mental Health	MO	262,800
Missouri Department of Mental Health	MO	212,604
Missouri Department of Mental Health	MO	264,828
Missouri Department of Mental Health	MO	104,292
Missouri Department of Mental Health	MO	532,860
Missouri Department of Mental Health	MO	97,128
Missouri Department of Mental Health	MO	143,724
Missouri Department of Mental Health	MO	268,380
Missouri Department of Mental Health	MO	28,140
Missouri Department of Mental Health	MO	179,256
Missouri Department of Mental Health	MO	477,240
Missouri Department of Mental Health	MO	107,760
Missouri Department of Mental Health	MO	138,696
Missouri Department of Mental Health	MO	417,876
Missouri Department of Mental Health	MO	374,316
Missouri Department of Mental Health	MO	358,260
Missouri Department of Mental Health	MO	1,024,104
Missouri Department of Mental Health	MO	1,465,992
Missouri Department of Mental Health	MO	124,380
Pettis County Community Partnership Inc	MO	118,207
Phoenix Programs, Inc	MO	74,113
Phoenix Programs, Inc	MO	71,122
Preferred Family Healthcare, Inc	MO	105,663
reStart, Inc	MO	124,915
reStart, Inc	MO	206,817
reStart, Inc	MO	226,306
Ripley County Family Resource Center	MO	53,570
Rose Brooks Center, Inc	MO	207,967
SAVE, Inc	MO	299,483
SAVE, Inc	MO	201,153
SEMO Christian Restoration Center	MO	70,756
Sheffield Place	MO	163,079
Swope Health Services	MO	185,281
The Housing Authority of Springfield	MO	114,936
The Kansas City Metropolitan Lutheran Ministry	MO	213,515
The Kitchen, Inc	MO	82,950
The Kitchen, Inc	MO	393,750
The Salvation Army	MO	236,698
The Salvation Army—Midland Division	MO	47,452
The Salvation Army—Midland Division	MO	37,450
The Salvation Army—Midland Division	MO	26,655
The Salvation Army—Midland Division	MO	148,882
The Salvation Army—Midland Division	MO	80,000
The Salvation Army—Midland Division	MO	107,887
Truman Medical Center, Inc	MO	518,157
AIDS Services Coalition	MS	132,605
Back Bay Mission, Inc	MS	92,160
Back Bay Mission, Inc	MS	66,735
Back Bay Mission, Inc	MS	86,021
Bolivar County Community Action Agency, Inc	MS	176,201
Bolivar County Community Action Agency, Inc	MS	473,286
Catholic Charities Inc	MS	337,923
Catholic Charities, Inc	MS	169,691
Forrest General Hospital	MS	262,500
Forrest General Hospital	MS	250,000
Grace House Inc	MS	192,434
Gulf Coast Women's Center for Nonviolence, Inc	MS	38,788
Gulf Coast Women's Center for Nonviolence, Inc	MS	48,796

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Mental Health Association of MS	MS	27,328
Mental Health Association of MS	MS	61,997
Mississippians United to End Homelessness	MS	163,518
Mississippians United to End Homelessness	MS	155,120
Mountain of Faith Ministries	MS	254,740
Multi-County Community Service Agency, Inc	MS	353,840
New Dimensions Development Foundation, Inc	MS	159,238
New Life for Women, Inc	MS	203,019
Open Doors Homeless Coalition	MS	23,210
Open Doors Homeless Coalition	MS	45,648
PTEH, Inc	MS	118,650
PTEH, Inc	MS	99,850
Recovery House, Inc	MS	213,960
Recovery House, Inc	MS	110,321
South Mississippi AIDS Task Force, Inc	MS	129,046
Stewpot Community Services. Inc	MS	49,392
Stewpot Community Services. Inc	MS	200,000
University of Southern Mississippi—IDS	MS	336,000
District 7 Human Resources Development Council	MT	63,868
Florence Crittenton Home and Services	MT	124,546
God's Love, Inc	MT	143,305
Helena Housing Authority	MT	184,128
Housing Authority of Billings	MT	182,760
Housing Authority of Billings	MT	96,480
Human Resource Development Council of District IX, Inc	MT	51,600
Human Resource Development Council of District IX, Inc	MT	38,948
Human Resources Council, District XII	MT	90,958
Missoula County	MT	102,371
Missoula County	MT	147,498
Missoula Housing Authority	MT	818,256
Montana Department of Commerce	MT	247,500
Mountain Home Montana, Inc	MT	76,798
Northwest Montana Human Resources, Inc	MT	35,769
Poverello Center Inc	MT	69,467
Public Housing Authority of Butte	MT	85,032
Samaritan House, Inc	MT	63,000
Second Chance Homes, Inc	MT	51,619
State of Montana	MT	66,980
Supporters of Abuse Free Environments (SAFE), Inc	MT	34,000
Alamance-Caswell Area MH/DD/SA Authority	NC	225,768
Alcohol and Drug Services of Guilford, Inc	NC	34,996
As One Ministries, Inc	NC	54,255
As One Ministries, Inc	NC	63,840
Brunswick Family Assistance Agency, Inc	NC	21,040
Brunswick Family Assistance Agency, Inc	NC	21,316
Burlington Development Corporation	NC	74,215
Cape Fear Housing for Independent Living, Inc	NC	95,381
CenterPoint Human Services	NC	219,420
CenterPoint Human Services	NC	51,373
CenterPoint Human Services	NC	111,300
Charlotte Center for Urban Ministry, Inc	NC	150,060
Christians United Outreach Center	NC	82,284
City of Winston-Salem	NC	25,000
City of Winston-Salem	NC	98,122
City of Winston-Salem	NC	18,355
City of Winston-Salem	NC	26,413
City of Winston-Salem	NC	123,948
City of Winston-Salem	NC	46,475
City of Winston-Salem	NC	100,620
City of Winston-Salem	NC	56,829
City of Winston-Salem	NC	14,663
City of Winston-Salem	NC	90,511
City of Winston-Salem	NC	56,889
City of Winston-Salem	NC	22,575
City of Winston-Salem	NC	180,516
City of Winston-Salem	NC	47,545
City of Winston-Salem	NC	178,764
City of Winston-Salem	NC	49,614
City of Winston-Salem	NC	17,670
City of Winston-Salem	NC	70,206
Cleveland County Abuse Prevention Council	NC	37,158
Cleveland County Abuse Prevention Council	NC	59,918

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Cleveland County Abuse Prevention Council	NC	9,286
Coastal Horizons Center, Inc	NC	80,619
Community Alternatives for Supportive Abodes	NC	425,004
Community Alternatives for Supportive Abodes	NC	21,677
Community Alternatives for Supportive Abodes	NC	188,248
Community Alternatives for Supportive Abodes	NC	102,616
Community Alternatives for Supportive Abodes	NC	85,575
Community Alternatives for Supportive Abodes	NC	50,176
Community Link, Programs of Travelers Aid	NC	224,682
Community Link, Programs of Travelers Aid	NC	268,346
Community Link, Programs of Travelers Aid	NC	234,983
Crossroads Behavioral Healthcare	NC	38,468
Cumberland County, NC	NC	84,134
Cumberland Interfaith Hospitality Network	NC	120,588
Cumberland Interfaith Hospitality Network	NC	262,736
East Carolina Behavioral Health	NC	765,000
East Carolina Behavioral Health	NC	283,092
East Carolina Behavioral Health	NC	49,920
Family Service of the Piedmont, Inc	NC	70,218
First Fruit Ministries	NC	120,716
Five County Mental Health Authority	NC	41,400
Five County Mental Health Authority	NC	31,092
Five County Mental Health Authority	NC	182,292
Five County Mental Health Authority	NC	665,040
Gaston County Interfaith Hospitality Network, Inc	NC	38,850
Gaston Lincoln Cleveland MH/DD/SA (Pathways)	NC	111,588
Gaston Lincoln Cleveland MH/DD/SA (Pathways)	NC	341,544
Genesis Home, Inc	NC	174,999
Good Shepherd Ministries of Wilmington, Inc. (56–1566178)	NC	56,073
Graham Housing Authority	NC	59,052
Greensboro Housing Authority	NC	423,948
Greensboro Housing Authority	NC	477,369
Greensboro Housing Authority	NC	21,996
Greensboro Urban Ministry	NC	59,850
Homeward Bound of Asheville, Inc	NC	22,339
Homeward Bound of Asheville, Inc	NC	44,320
Homeward Bound of Asheville, Inc	NC	147,886
Hope Haven Inc	NC	52,867
Hope Haven Inc	NC	383,500
Hope Haven Inc	NC	53,980
Hope Haven Inc	NC	63,000
Hospitality House of the Boone Area, Inc	NC	31,928
Hospitality House of the Boone Area, Inc	NC	29,179
Hospitality House of the Boone Area, Inc	NC	31,181
Housing Authority of the City of Asheville	NC	162,216
Housing Authority of the City of Asheville	NC	77,676
Housing Authority of the City of Wilmington	NC	43,318
Housing Authority of the City of Wilmington	NC	134,112
Housing for New Hope, Inc	NC	21,761
Inter-faith Alliance Corp	NC	31,998
Joseph's House, Inc	NC	43,730
Mary's House, Inc	NC	135,982
Mecklenburg County	NC	145,136
Mecklenburg County Area MH, DD, & SA Authority	NC	294,336
Mecklenburg County Area MH, DD, & SA Authority	NC	316,764
Mecklenburg County Area MH, DD, & SA Authority	NC	44,363
Mecklenburg County Area MH, DD, & SA Authority	NC	1,408,188
Mountain Youth Reosurces Inc	NC	10,175
New River Service Authority	NC	69,517
Next Step Ministries, Inc	NC	37,800
North Carolina Housing Coalition	NC	570,203
North Carolina Housing Coalition	NC	75,249
North Carolina Housing Coalition	NC	8,369
North Carolina Housing Coalition	NC	10,096
Northwestern Housing Enterprises, Incorporated	NC	33,018
Onslow Carteret Behavioral Healthcare Services	NC	415,380
OPC Mental Health, Developmental Disabilities and Substance	NC	312,000
OPC Mental Health, Developmental Disabilities and Substance	NC	40,368
OPC Mental Health, Developmental Disabilities and Substance	NC	109,202
OPC Mental Health, Developmental Disabilities and Substance	NC	215,520
Open Door Ministries of High Point, Inc	NC	48,919
Open Door Ministries of High Point, Inc	NC	13,750

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Opposing Abuse with Service, Information and Shelter	NC	29,294
Passage Home, Inc	NC	22,967
Passage Home, Inc	NC	192,134
Passage Home, Inc	NC	205,752
Piedmont Behavioral Healthcare	NC	41,988
Piedmont Behavioral Healthcare	NC	691,320
Piedmont Behavioral Healthcare	NC	45,516
Piedmont Behavioral Healthcare	NC	88,644
Rockingham County Help for Homeless, Inc	NC	116,403
Rockingham County Help for Homeless, Inc	NC	454,503
Rockingham County Help for Homeless, Inc	NC	71,221
Salvation Army	NC	226,646
Salvation Army	NC	87,499
Sandhills Center LME	NC	250,500
Sandhills Community Action Program, Inc	NC	6,444
Sandhills Community Action Program, Inc	NC	240,792
Smoky Mountain Center	NC	269,880
Smoky Mountain Center	NC	373,140
St. Peter's Homes, Inc	NC	33,333
Step & Stages Disabled Veterans Resource Agency INC	NC	47,844
Surry Homeless and Affordable Housing Coalition	NC	60,091
The Arc of North Carolina	NC	33,214
The Greenville Community Shelters, Inc	NC	72,177
The Housing Authority of The City of Durham	NC	95,220
The New Reidsville Housing Authority	NC	33,528
The New Reidsville Housing Authority	NC	14,976
The Salvation Army, a Georgia Corporation	NC	35,470
The Salvation Army, a Georgia Corporation	NC	80,057
The Salvation Army, a Georgia Corporation	NC	148,015
The Salvation Army, A Georgia Corporation for the Salvation	NC	19,274
The Servant Center, Inc	NC	47,586
The Servant Center, Inc	NC	125,413
United Community Ministries	NC	88,200
United Community Ministries	NC	87,570
Urban Ministries of Durham, Inc	NC	62,345
Wake County Human Services	NC	333,600
Wake County Human Services	NC	210,900
Wake County Human Services	NC	935,316
Wake County Human Services	NC	231,684
Wake County Human Services	NC	220,238
WAMY Community Action, Inc	NC	35,567
Western Highlands, A Local Management Entity	NC	256,992
Western North Carolina Community Health Services, Inc	NC	260,360
Wilmington Housing Finance and Development Inc	NC	62,333
Wilmington Interfaith Hospitality Network, Inc	NC	86,997
With Friends, Inc	NC	66,457
XDS Inc	NC	28,047
XDS Inc	NC	18,698
Youth Focus Inc	NC	51,700
Abused Adult Resource Center	ND	60,000
Abused Adult Resource Center	ND	78,819
Burleigh County Housing Authority	ND	165,012
Community Violence Intervention Center Inc	ND	95,845
Fargo Housing and Redevelopment Authority	ND	80,256
Fargo Housing and Redevelopment Authority	ND	77,760
Fargo Housing and Redevelopment Authority	ND	150,000
Fargo Housing and Redevelopment Authority	ND	198,828
Grand Lodge of North Dakota, I.O.O.F	ND	46,675
North Dakota Association for the Disabled, Inc	ND	34,184
North Dakota Coalition for Homeless People, Inc	ND	74,072
North Dakota Dept. of Commerce	ND	227,952
Prairie Harvest Mental Health	ND	84,999
Red River Valley Community Action	ND	45,202
Ruth Meiers Hospitality House Inc	ND	39,999
St. Vincent of Grand Forks	ND	15,277
Women's Alliance, Inc. DBA: Domestic Violence and Rape Crisi	ND	37,600
YWCA Cass Clay	ND	75,948
YWCA Cass Clay	ND	59,850
YWCA Cass Clay	ND	134,277
YWCA Cass Clay	ND	80,504
Blue Valley Community Action, Inc	NE	24,677
Blue Valley Community Action, Inc	NE	200,502

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Care Corps, Inc	NE	122,067
Catholic Social Services	NE	115,148
Catholic Social Services	NE	95,658
CEDARS Youth Services	NE	130,707
CenterPointe Inc	NE	446,251
CenterPointe Inc	NE	90,654
CenterPointe Inc	NE	191,797
CenterPointe Inc	NE	191,642
Central Nebraska Community Services, Inc	NE	197,437
Central Nebraska Community Services, Inc	NE	127,085
Cirrus House, Inc	NE	46,433
City of Omaha	NE	158,136
Community Action of Nebraska	NE	31,896
Community Action Partnership of Lancaster & Saunders Counties	NE	460,862
Community Action Partnership of Western Nebraska	NE	31,880
Community Action Partnership of Western Nebraska	NE	23,503
Goldenrod Hills Community Action, Inc	NE	27,171
Heartland Family Service	NE	157,125
Heartland Family Service	NE	93,606
Heartland Family Service	NE	406,026
Heartland Family Service	NE	445,280
Heartland Family Service	NE	265,713
Hope of Glory Ministries, Inc	NE	76,822
Iowa Institute for Community Alliances	NE	121,537
Monument Family Connections	NE	46,474
St. Monica's	NE	140,456
The Christian Worship Center	NE	95,673
The Salvation Army	NE	58,020
The Salvation Army	NE	146,694
The Salvation Army	NE	138,897
Volunteers of America, Dakotas	NE	300,809
Behavioral Health & Dev. Serv. of Strafford County, Inc	NH	85,865
Child and Family Services	NH	111,529
Families in Transition	NH	44,000
Families in Transition	NH	122,500
Families in Transition	NH	111,300
Families in Transition	NH	50,340
Families in Transition	NH	67,183
Greater Nashua Council on Alcoholism, Inc	NH	60,083
Harbor Homes, Inc	NH	104,440
Harbor Homes, Inc	NH	171,308
Harbor Homes, Inc	NH	13,121
Harbor Homes, Inc	NH	873,170
Harbor Homes, Inc	NH	13,466
Harbor Homes, Inc	NH	26,126
Harbor Homes, Inc	NH	59,545
Harbor Homes, Inc	NH	56,141
Harbor Homes, Inc	NH	50,000
Harbor Homes, Inc	NH	13,121
Helping Hands Outreach Ministries, Inc	NH	33,705
Helping Hands Outreach Ministries, Inc	NH	70,885
Marguerite's Place Inc	NH	58,480
My Friend's Place	NH	54,239
Nashua Housing Authority	NH	33,804
Northern Human Services	NH	132,011
Southern New Hampshire Services, Inc	NH	32,191
Southern New Hampshire Services, Inc	NH	36,039
State of New Hampshire	NH	196,762
State of New Hampshire	NH	12,778
State of New Hampshire	NH	52,838
State of New Hampshire	NH	71,766
State of New Hampshire	NH	116,524
State of New Hampshire	NH	236,866
State of New Hampshire	NH	188,527
State of New Hampshire	NH	14,154
State of New Hampshire	NH	247,279
State of New Hampshire	NH	80,640
State of New Hampshire	NH	96,078
State of New Hampshire	NH	99,632
State of New Hampshire	NH	112,951
State of New Hampshire	NH	68,092
State of New Hampshire	NH	42,097

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
State of New Hampshire	NH	88,497
State of New Hampshire	NH	357,354
State of New Hampshire	NH	293,400
State of New Hampshire	NH	250,176
State of New Hampshire	NH	72,590
State of New Hampshire	NH	79,047
State of New Hampshire	NH	37,496
The Housing Partnership	NH	143,815
The Way Home, Inc	NH	97,038
The Way Home, Inc	NH	47,734
The Way Home, Inc	NH	45,025
The Way Home, Inc	NH	63,000
Tri County CAP, Inc	NH	188,568
180 Turning Lives Around, Inc	NJ	122,805
180 Turning Lives Around, Inc	NJ	142,530
AAH of Bergen County, Inc	NJ	88,322
AAH of Bergen County, Inc	NJ	98,437
AAH of Bergen County, Inc	NJ	78,925
Advance housing, Inc	NJ	19,812
Advance housing, Inc	NJ	167,735
Advance housing, Inc	NJ	50,910
Advance housing, Inc	NJ	358,255
Advance housing, Inc	NJ	78,536
Alternatives, Inc	NJ	15,557
Alternatives, Inc	NJ	98,478
Alternatives, Inc	NJ	63,170
Alternatives, Inc	NJ	101,278
Bergen County Community Action Partnership, Inc	NJ	92,748
Bergen County Community Action Partnership, Inc	NJ	93,712
Bergen County Community Action Partnership, Inc	NJ	63,702
Burlington County Community Action Program	NJ	14,172
Burlington County Community Action Program	NJ	10,667
Camden County	NJ	388,620
Camden County	NJ	284,580
Camden County Council On Economic Opportunity, Inc	NJ	149,704
Camden County Council On Economic Opportunity, Inc	NJ	191,170
Camden County Council On Economic Opportunity, Inc	NJ	133,674
Cape Counseling Services	NJ	170,760
Cape Counseling Services	NJ	26,604
Career Opportunity Development	NJ	51,442
Catholic Charities Diocese of Metuchen	NJ	233,047
Catholic Charities of the Archdiocese of Newark	NJ	248,664
Catholic Charities of the Archdiocese of Newark	NJ	160,000
Catholic Charities, Diocese of Trenton	NJ	24,860
Catholic Charities, Diocese of Trenton	NJ	69,218
Center For Family Services, Inc	NJ	30,580
Center For Family Services, Inc	NJ	67,217
Center For Family Services, Inc	NJ	210,370
Center For Family Services, Inc	NJ	70,544
Center For Family Services, Inc	NJ	35,437
Center For Family Services, Inc	NJ	30,935
Center For Family Services, Inc	NJ	18,130
City of East Orange	NJ	182,460
City of East Orange	NJ	388,440
City of Newark	NJ	1,059,600
City of Newark	NJ	647,400
City of Trenton	NJ	175,296
City of Trenton	NJ	120,306
City of Trenton	NJ	53,100
City of Trenton	NJ	293,184
City of Trenton	NJ	41,597
City of Trenton	NJ	18,519
City of Trenton	NJ	195,600
City of Trenton	NJ	158,808
City of Trenton	NJ	121,196
City of Trenton	NJ	47,808
City of Trenton	NJ	7,613
City of Trenton	NJ	24,120
City of Trenton	NJ	100,956
City of Trenton	NJ	796,500
City of Trenton	NJ	83,968
Collaborative Support Programs of New Jersey	NJ	453,180

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Collaborative Support Programs of New Jersey	NJ	26,328
Collaborative Support Programs of New Jersey	NJ	776,880
Collaborative Support Programs of New Jersey	NJ	76,524
Community Hope, Inc	NJ	39,387
Community Hope, Inc	NJ	28,198
Community Hope, Inc	NJ	30,189
Comprehensive Behavioral Healthcare Inc	NJ	110,376
County of Bergen	NJ	93,068
County of Bergen	NJ	85,900
County of Essex	NJ	258,960
County of Monmouth	NJ	284,700
County of Monmouth	NJ	78,336
County of Monmouth	NJ	404,508
County of Monmouth	NJ	217,000
County of Monmouth	NJ	279,480
County of Monmouth	NJ	183,000
County of Morris	NJ	88,560
Covenant House New Jersey, Inc	NJ	144,717
Covenant House New Jersey, Inc	NJ	122,232
Covenant House New Jersey, Inc	NJ	51,051
Dooley House Inc	NJ	211,974
East Orange General Hospital	NJ	245,600
Easter Seal Society of New Jersey Inc, The	NJ	46,664
Easter Seal Society of New Jersey Inc, The	NJ	43,207
Easter Seal Society of New Jersey Inc, The	NJ	7,464
Elizabeth/Union County CoC	NJ	80,656
Elizabeth/Union County CoC	NJ	13,300
Elizabeth/Union County CoC	NJ	1,101,229
Elizabeth/Union County CoC	NJ	36,120
Elizabeth/Union County CoC	NJ	26,917
Elizabeth/Union County CoC	NJ	258,960
Elizabeth/Union County CoC	NJ	284,206
Elizabeth/Union County CoC	NJ	94,427
Elizabeth/Union County CoC	NJ	49,020
Elizabeth/Union County CoC	NJ	336,924
Elizabeth/Union County CoC	NJ	196,068
Elizabeth/Union County CoC	NJ	99,342
Elizabeth/Union County CoC	NJ	217,714
Elizabeth/Union County CoC	NJ	25,836
Elizabeth/Union County CoC	NJ	59,184
Elizabeth/Union County CoC	NJ	470,100
Elizabeth/Union County CoC	NJ	55,488
Elizabeth/Union County CoC	NJ	160,478
Elizabeth/Union County CoC	NJ	623,916
Elizabeth/Union County CoC	NJ	16,665
Elizabeth/Union County CoC	NJ	18,654
Family Service of Burlington County, New Jersey	NJ	42,000
HABcore, Inc	NJ	78,899
HABcore, Inc	NJ	374,638
HABcore, Inc	NJ	172,473
Hispanic Multi Purpose Service Center	NJ	41,902
Homeless Solutions Inc	NJ	64,299
Homeless Solutions Inc	NJ	219,397
Homeless Solutions Inc	NJ	396,965
Housing Authority of Bergen County	NJ	2,150,940
Housing Authority of Bergen County	NJ	109,788
Housing Authority of Bergen County	NJ	588,060
Housing Authority of the City of Jersey City	NJ	639,240
Housing Authority of The City of Paterson	NJ	130,644
Housing Authority of The City of Paterson	NJ	127,248
Housing Authority of the Township of Edison	NJ	78,813
Housing Authority of the Township of Edison	NJ	86,940
Housing Authority of the Township of Edison	NJ	517,440
Housing Authority of the Township of Edison	NJ	90,568
Interfaith Homeless Outreach Council	NJ	10,171
Isaiah House, Inc	NJ	249,495
Jersey Battered Women's Service, Inc	NJ	198,137
Jersey City Episcopal Community Development	NJ	391,797
Lakewood Housing Authority	NJ	34,057
Lakewood Housing Authority	NJ	104,700
Lakewood Housing Authority	NJ	65,820
Lakewood Housing Authority	NJ	30,504

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Let's Celebrate, Inc	NJ	83,794
Making It Possible to end Homelessness	NJ	63,349
Mental Health Association of Morris County, Inc	NJ	60,060
Monmouth Housing Alliance	NJ	43,923
New Community Corporation	NJ	735,000
New Jersey Community Development Corporation	NJ	82,934
New Jersey Department of Military and Veterans Affairs	NJ	180,629
New Jersey Housing and Mortgage Finance Agency	NJ	25,000
New Jersey Housing and Mortgage Finance Agency	NJ	19,970
New Jersey Housing and Mortgage Finance Agency	NJ	56,727
New Jersey Housing and Mortgage Finance Agency	NJ	2,000
New Jersey Housing and Mortgage Finance Agency	NJ	85,667
New Jersey Housing and Mortgage Finance Agency	NJ	25,000
New Jersey Housing and Mortgage Finance Agency	NJ	3,000
New Jersey Housing and Mortgage Finance Agency	NJ	45,028
New Jersey Housing and Mortgage Finance Agency	NJ	2,560
New Jersey Housing and Mortgage Finance Agency	NJ	40,655
New Jersey Housing and Mortgage Finance Agency	NJ	22,667
New Jersey Housing and Mortgage Finance Agency	NJ	1,998
New Jersey Housing and Mortgage Finance Agency	NJ	2,001
New Jersey Housing and Mortgage Finance Agency	NJ	2,457
New Jersey Housing and Mortgage Finance Agency	NJ	149,999
New Jersey Housing and Mortgage Finance Agency	NJ	2,667
New Jersey Housing and Mortgage Finance Agency	NJ	16,687
New Jersey Housing and Mortgage Finance Agency	NJ	3,000
New Jersey Housing and Mortgage Finance Agency	NJ	69,000
New Jersey Housing and Mortgage Finance Agency	NJ	17,000
NJ Department of Community Affairs	NJ	198,984
NJ Department of Community Affairs	NJ	1,021,440
NJ Department of Community Affairs	NJ	268,284
NJ Department of Community Affairs	NJ	168,324
NJ Department of Community Affairs	NJ	35,472
NJ Department of Community Affairs	NJ	257,412
NJ Department of Community Affairs	NJ	168,324
NJ Department of Community Affairs	NJ	170,436
NJ Department of Community Affairs	NJ	134,544
NJ Department of Community Affairs	NJ	94,680
NJ Department of Community Affairs	NJ	129,480
NJ Department of Community Affairs	NJ	143,832
NJ Department of Community Affairs	NJ	69,451
NJ Department of Community Affairs	NJ	86,400
NJ Department of Community Affairs	NJ	70,944
NJ Department of Community Affairs	NJ	53,280
NJ Department of Community Affairs	NJ	190,452
North Hudson Community Action Corporation	NJ	404,148
Ocean Community Economic Action Now, Inc	NJ	81,957
Ocean Community Economic Action Now, Inc	NJ	41,697
Ocean Community Economic Action Now, Inc	NJ	38,500
Ocean Community Economic Action Now, Inc	NJ	40,718
Ocean's Harbor House	NJ	19,372
Passaic County Department of Human Services	NJ	19,776
Passaic County Department of Human Services	NJ	235,260
Passaic County Department of Human Services	NJ	369,480
Passaic County Department of Human Services	NJ	806,760
Positive Health Care, Inc	NJ	176,283
Project H.O.P.E.	NJ	83,693
Project Live, Inc	NJ	971,964
Saint Joseph's Home	NJ	558,534
Salem County Inter Agency Council of Human Services	NJ	140,560
Shelter Our Sisters	NJ	16,382
Shelter Our Sisters	NJ	23,833
South Jersey Behavioral Health Resources, Inc	NJ	32,809
St. Philip's Ministry UMC	NJ	63,461
Strengthen Our Sisters	NJ	130,652
The Center in Asbury Park, Inc	NJ	184,819
The Dackks Group for Supportive Housing Development, Inc	NJ	41,335
The House of Faith, Inc	NJ	245,266
The Lester A. Behavioral Health Center Inc	NJ	30,526
The Lester A. Behavioral Health Center Inc	NJ	248,663
The Lester A. Behavioral Health Center Inc	NJ	15,360
The Salvation Army	NJ	134,510
Township of Irvington	NJ	138,365

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Township of Irvington/INIC	NJ	250,474
Transitional Housing Services, Inc	NJ	97,093
Triple C Housing Inc	NJ	54,425
United Way of Hudson County	NJ	393,006
Vantage Health System, Inc	NJ	90,896
Vantage Health System, Inc	NJ	217,402
Vetgroup, Inc	NJ	20,664
Volunteers Of America Delaware Valley Inc	NJ	142,267
Volunteers Of America Delaware Valley Inc	NJ	88,970
Volunteers Of America Delaware Valley Inc	NJ	86,458
Volunteers Of America Delaware Valley Inc	NJ	117,344
Volunteers Of America Delaware Valley Inc	NJ	115,874
Volunteers Of America Delaware Valley Inc	NJ	103,005
Warren County Housing Authority	NJ	187,020
West New York Housing Authority	NJ	1,136,220
WomenRising	NJ	644,268
Albuquerque HealthCare for the Homeless, Inc	NM	135,267
Barrett Foundation, Inc	NM	97,447
Barrett Foundation, Inc	NM	23,780
Bernalillo County	NM	92,329
Catholic Charities	NM	241,153
Catholic Charities	NM	223,055
Catholic Charities	NM	51,371
Catholic Charities	NM	202,692
Catholic Charities of Gallup	NM	26,727
City of Albuquerque	NM	1,157,556
City of Albuquerque	NM	366,960
City of Albuquerque	NM	223,709
City of Albuquerque	NM	895,822
City of Las Cruces, New Mexico	NM	99,120
City of Santa Fe	NM	224,760
City of Santa Fe	NM	159,684
City of Santa Fe	NM	134,484
City of Santa Fe	NM	235,164
Community Area Resource Enterprise	NM	400,000
County of Sandoval	NM	228,576
Crisis Center of Northern New Mexico	NM	380,550
Crossroads for Women (formerly Human Rights Advocacy)	NM	112,834
Crossroads for Women (formerly Human Rights Advocacy)	NM	191,940
Curry County	NM	128,880
Esperanza Shelter For Battered Families, Inc	NM	94,500
Goodwill Industries of New Mexico	NM	114,866
Haven House, Inc	NM	50,000
La Casa, Inc	NM	292,166
Los Lunas Village of	NM	183,348
New Mexico Coalition to End Homelessness	NM	394,798
S.A.F.E. House	NM	42,096
Saint Elizabeth Shelter Corporation	NM	72,713
Saint Elizabeth Shelter Corporation	NM	192,240
San Juan County Partnership	NM	66,713
Socorro County Housing Authority	NM	290,880
Socorro County Housing Authority	NM	95,916
St. Martin's Hospitality Center	NM	115,500
Supportive Housing Coalition of New Mexico	NM	171,226
Supportive Housing Coalition of New Mexico	NM	26,775
Transitional Living Services, Inc	NM	276,300
Transitional Living Services, Inc	NM	105,000
Valencia Shelter Services for Victims of Domestic Violence	NM	106,666
HELP Las Vegas Housing Corporation	NV	195,230
Churchill Council on Alcohol and Other Drugs	NV	48,509
City of Reno	NV	69,400
City of Reno	NV	110,292
Department of Health and Human Services	NV	240,612
Douglas County	NV	133,449
HELP Las Vegas Housing Corporation II	NV	155,780
HELP of Southern Nevada	NV	1,225,000
Henderson Allied Community Advocates	NV	105,328
Henderson Allied Community Advocates	NV	162,056
Lutheran Social Services of Nevada	NV	104,556
Nevada Community Associates, Inc	NV	216,226
Nevada Partnership for Homeless Youth	NV	221,854
Northern Nevada Adult Mental Health Services	NV	53,280

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Northern Nevada Adult Mental Health Services	NV	418,812
Northern Nevada Community Housing Resource Board	NV	51,955
ReStart	NV	812,489
Southern Nevada Adult Mental Health Services	NV	185,508
Southern Nevada Adult Mental Health Services	NV	901,896
Southern Nevada Adult Mental Health Services	NV	231,780
Southern Nevada Adult Mental Health Services	NV	294,072
St. Jude's Ranch for Children	NV	265,284
St. Vincent HELP Inc	NV	120,069
St. Vincent HELP Inc	NV	50,754
St. Vincent HELP Inc	NV	86,879
The Salvation Army, Clark County, Nevada	NV	323,451
The Salvation Army, Clark County, Nevada	NV	429,949
United States Veterans Initiative	NV	116,015
Vitality Center	NV	84,164
Washoe County	NV	126,954
Washoe County	NV	56,832
Women's Development Center	NV	643,348
Women's Development Center	NV	384,482
Women's Development Center	NV	82,448
Women's Development Center	NV	43,625
Adirondack Vets House, Inc	NY	78,460
Adirondack Vets House, Inc	NY	75,417
Albany Housing Authority	NY	152,892
Albany Housing Authority	NY	279,600
Albany Housing Authority	NY	44,220
Albany Housing Authority	NY	244,908
Albany Housing Authority	NY	235,128
Albany Housing Authority	NY	53,064
Albany Housing Authority	NY	111,996
Albany Housing Authority	NY	216,168
Albany Housing Coalition, Inc	NY	38,251
Albany Housing Coalition, Inc	NY	43,155
Albany Housing Coalition, Inc	NY	63,502
Albany Housing Coalition, Inc	NY	29,970
Albany Housing Coalition, Inc	NY	21,000
Ali Forney Center	NY	527,857
Ali Forney Center	NY	438,598
Altamont Program, Inc	NY	31,150
Anchor House, Inc	NY	240,648
Argus Community, Inc	NY	371,322
Argus Community, Inc	NY	370,278
Argus Community, Inc	NY	430,101
Association to Benefit Children	NY	115,706
Auburn Housing Authority	NY	37,200
Bailey House Inc	NY	629,300
Bailey House Inc	NY	166,666
Banana Kelly Improvement Assoc Inc	NY	386,525
Basics, Inc	NY	353,208
Bethesda House of Schenectady, Inc	NY	22,300
Bethesda House of Schenectady, Inc	NY	48,083
Bethesda House of Schenectady, Inc	NY	63,152
Bethesda House of Schenectady, Inc	NY	72,351
Bethesda House of Schenectady, Inc	NY	63,564
Bethesda House of Schenectady, Inc	NY	152,738
Binghamton Housing Authority	NY	107,280
Bowery Residents' Committee, Inc	NY	360,106
Bowery Residents' Committee, Inc	NY	511,358
Bowery Residents' Committee, Inc	NY	497,954
Bowery Residents' Committee, Inc	NY	355,001
Bowery Residents' Committee, Inc	NY	368,496
Bowery Residents' Committee, Inc	NY	318,891
Bowery Residents' Committee, Inc	NY	364,883
BronxWorks Inc	NY	1,200,000
BronxWorks Inc	NY	105,000
BronxWorks Inc	NY	77,030
Brooklyn Bureau of Community Service	NY	474,924
Brooklyn Bureau of Community Service	NY	249,674
Capital Area Peer Services	NY	96,017
Catholic Charities Diocese of Rockville Centre	NY	155,595
Catholic Charities Diocese of Rockville Centre	NY	174,584
Catholic Charities Diocese of Rockville Centre	NY	222,584

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Catholic Charities Diocese of Rockville Centre	NY	739,431
Catholic Charities Diocese of Rockville Centre	NY	190,664
Catholic Charities Housing Office	NY	87,937
Catholic Charities Housing Office	NY	125,932
Catholic Charities Housing Office	NY	222,485
Catholic Charities of Chemung/Schuyler	NY	93,534
Catholic Charities of Chemung/Schuyler	NY	152,231
Catholic Charities of Chemung/Schuyler	NY	103,356
Catholic Charities of Chemung/Schuyler	NY	134,179
Catholic Charities of Chemung/Schuyler	NY	47,202
Catholic Charities of Chemung/Schuyler	NY	89,796
Catholic Charities of Rochester dba Catholic Family Center	NY	133,879
Catholic Charities of Rochester dba Catholic Family Center	NY	246,941
Catholic Charities of the Roman Catholic Diocese of Syracuse	NY	83,332
Catholic Charities of the Roman Catholic Diocese of Syracuse	NY	67,050
Catholic Charities of the Roman Catholic Diocese of Syracuse	NY	87,866
Catholic Charities of the Roman Catholic Diocese of Syracuse	NY	215,977
Catholic Charities of the Roman Catholic Diocese of Syracuse	NY	50,263
Catholic Charities of the Roman Catholic Diocese of Syracuse	NY	218,293
Catholic Charities of the Roman Catholic Diocese of Syracuse	NY	313,012
Catholic Charities of the Roman Catholic Diocese of Syracuse	NY	215,720
Catholic Charities of the Roman Catholic Diocese of Syracuse	NY	282,796
Cattaraugus Community Action, Inc	NY	94,314
Cayuga/Seneca Community Action Agency, Inc	NY	35,289
Cayuga/Seneca Community Action Agency, Inc	NY	33,660
Cayuga/Seneca Community Action Agency, Inc	NY	59,869
CDCLI Housing Development Fund Corporation	NY	28,503
Central New York Services, Inc	NY	217,753
Central New York Services, Inc	NY	290,154
Central New York Services, Inc	NY	159,362
Central New York Services, Inc	NY	87,500
Central New York Services, Inc	NY	100,000
Central New York Services, Inc	NY	100,000
Central New York Services, Inc	NY	142,543
Central New York Services, Inc	NY	185,034
Chadwick Residence, Inc	NY	31,957
Chadwick Residence, Inc	NY	58,920
Chadwick Residence, Inc	NY	188,720
Chautauqua Opportunities, Inc	NY	21,667
Circulo de la Hispanidad	NY	133,024
Circulo de la Hispanidad	NY	165,175
City Mission Society, Inc	NY	1,050,000
City of Mount Vernon (NY)	NY	143,031
City of Mount Vernon (NY)	NY	49,749
City of Mount Vernon (NY)	NY	60,768
City of Mount Vernon (NY)	NY	112,728
City of Mount Vernon (NY)	NY	30,450
City of Mount Vernon (NY)	NY	70,896
City of Mount Vernon (NY)	NY	33,273
City of Mount Vernon (NY)	NY	37,800
City of Mount Vernon (NY)	NY	171,675
City of Mount Vernon (NY)	NY	92,976
City of Mount Vernon (NY)	NY	43,260
City of Saratoga Springs	NY	255,120
City of Schenectady	NY	63,960
City of Schenectady	NY	127,920
Coalition for the Homeless	NY	375,786
Columba Kavanagh House, Inc	NY	388,163
COLUMBIA OPPORTUNITIES INCORPORATED	NY	9,697
COLUMBIA OPPORTUNITIES INCORPORATED	NY	2,145
Common Ground Community IV HDFC	NY	141,382
Common Ground Community IV HDFC	NY	416,468
Community Access, Inc	NY	224,210
Community Access, Inc	NY	240,318
Community Access, Inc	NY	404,974
Community Action For Human Services, Inc	NY	436,241
Community Action for Human Services, Inc	NY	129,207
Community Action of Greene County, Inc	NY	88,350
Community Housing Innovations, Inc	NY	63,123
Community Housing Innovations, Inc	NY	168,638
Community Housing Innovations, Inc	NY	178,627
Community Housing Innovations, Inc	NY	52,148

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Community Housing Innovations, Inc	NY	70,316
Community Housing Innovations, Inc	NY	48,093
Community Housing Innovations, Inc	NY	137,665
Community Housing Innovations, Inc	NY	126,602
Community Housing Innovations, Inc	NY	109,697
Community Housing Innovations, Inc	NY	166,684
Community Missions of Niagara Frontier, Inc	NY	68,676
Community Services for the Developmentally Disabled, Inc	NY	269,042
Community, Counseling, & Mediation	NY	238,951
Community, Counseling, & Mediation	NY	232,181
Comunilife, Inc	NY	635,623
Comunilife, Inc	NY	663,215
Concern for Independent Living, Inc	NY	216,420
Corporation for AIDS Research, Education and Services, Inc	NY	25,000
Corporation for AIDS Research, Education and Services, Inc	NY	34,666
Corporation for AIDS Research, Education and Services, Inc	NY	16,666
Corporation for AIDS Research, Education and Services, Inc	NY	5,000
Corporation for AIDS Research, Education and Services, Inc	NY	33,333
Council of Alcohol and Drug Abuse of Sullivan County	NY	147,123
Council of Alcohol and Drug Abuse of Sullivan County	NY	39,796
Council of Alcohol and Drug Abuse of Sullivan County	NY	13,079
County of Dutchess	NY	81,864
County of Dutchess	NY	129,132
County of Dutchess	NY	84,384
County of Dutchess	NY	169,920
County of Dutchess	NY	53,532
County of Dutchess	NY	70,512
COUNTY OF NASSAU ECONOMIC DEVELOPMENT OFFICE OF HOUSING & IA	NY	339,260
Covenant House New York/Under 21, Inc	NY	594,542
Covenant House New York/Under 21, Inc	NY	376,444
Covenant House New York/Under 21, Inc	NY	419,148
Covenant House New York/Under 21, Inc	NY	504,647
Covenant House New York/Under 21, Inc	NY	129,654
Covenant House New York/Under 21, Inc	NY	166,948
Covenant House New York/Under 21, Inc	NY	177,978
Crystal Run Village, Inc	NY	133,350
CUCS, Inc	NY	1,302,539
CUCS, Inc	NY	238,140
CUCS, Inc	NY	199,999
CUCS, Inc	NY	226,800
CUCS, Inc	NY	298,736
CUCS, Inc	NY	103,950
Damon House New York, Inc	NY	262,479
Department of Community Mental Health	NY	209,352
Department of Community Mental Health	NY	559,944
Department of Community Mental Health	NY	1,247,676
Department of Community Mental Health	NY	473,988
Department of Community Mental Health	NY	689,532
Department of Community Mental Health	NY	993,756
Department of Community Mental Health	NY	1,142,928
Department of Community Mental Health	NY	479,916
Department of Community Mental Health	NY	233,592
Department of Community Mental Health	NY	458,364
Department of Community Mental Health	NY	980,652
DePaul Community Services	NY	82,219
Domestic Violence and Rape Crisis Services of Saratoga Count	NY	114,536
Domestic Violence and Rape Crisis Services of Saratoga Count	NY	36,607
Donald Reed	NY	172,908
DUNKIRK HOUSING AUTHORITY	NY	120,384
East House Corporation	NY	72,429
East New York Urban Youth Corps, Inc	NY	96,756
Ecclesia Ministries of Newburgh, Inc	NY	62,952
Education & Assistance Corporation	NY	107,139
El Regreso Foundation	NY	253,855
Emergency Housing Group, Inc	NY	186,148
Equinox, Inc	NY	98,210
Equinox, Inc	NY	84,955
Equinox, Inc	NY	82,363
Equinox, Inc	NY	63,675
Erie County Department of Mental Health	NY	708,336
Erie County Department of Mental Health	NY	306,144
Erie County Department of Mental Health	NY	208,456

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Erie County Department of Mental Health	NY	154,524
Erie County Department of Mental Health	NY	291,780
Erie County Department of Mental Health	NY	577,017
Erie County Department of Mental Health	NY	500,771
Erie County Department of Mental Health	NY	879,708
Erie County Department of Mental Health	NY	243,625
ETC Housing Corporation	NY	11,466
FACES NY	NY	133,913
FACES NY	NY	184,553
FACES NY	NY	152,092
Fairview Recovery Services ,Inc	NY	143,732
Fairview Recovery Services ,Inc	NY	91,000
Fairview Recovery Services ,Inc	NY	82,000
Family Nurturing Center of Central New York Inc	NY	105,810
Family of Woodstock, Inc	NY	91,667
Family of Woodstock, Inc	NY	69,530
Family Residences and Essential Enterprises, Inc	NY	63,775
Family Residences and Essential Enterprises, Inc	NY	104,022
Family Service League, Inc	NY	92,344
Family Service League, Inc	NY	252,049
Federation Employment and Guidance Service, Inc	NY	676,767
Federation Employment and Guidance Service, Inc	NY	558,906
Federation Employment and Guidance Service, Inc	NY	595,000
Federation Employment and Guidance Service, Inc	NY	582,961
Federation Employment and Guidance Service, Inc	NY	238,319
Federation of Organizations for the New York State Mentally	NY	100,849
Federation of Organizations for the New York State Mentally	NY	45,268
Federation of Organizations for the New York State Mentally	NY	46,235
Foundation for Research on Sexually Transmitted Diseases	NY	871,533
Fountain House, Inc	NY	639,295
Gateway Community Industries, Inc	NY	41,020
Gateway Community Industries, Inc	NY	65,806
Gateway Community Industries, Inc	NY	91,069
Gateway Community Industries, Inc	NY	45,120
Gateway Community Industries, Inc	NY	41,307
Gateway Community Industries, Inc	NY	49,876
Gateway Community Industries, Inc	NY	70,350
Geneva Housing Authority	NY	62,460
Geneva Housing Authority	NY	104,011
Geneva Housing Authority	NY	241,860
Gerard Place Housing Development Fund Company, Inc	NY	177,909
Glens Falls Housing Authority	NY	31,488
Glens Falls Housing Authority	NY	114,264
Glens Falls Housing Authority	NY	88,860
Goddard Riverside Community Center	NY	280,889
Goddard Riverside Community Center	NY	169,644
Goddard Riverside Community Center	NY	96,657
Goddard Riverside Community Center	NY	153,696
Good Shepherd Services	NY	414,000
Grace Smith House, Inc	NY	11,209
Grace Smith House, Inc	NY	18,385
Greyston Health Services, Inc	NY	251,111
H.E.L.P. Equity Homes, Inc	NY	132,720
H.E.L.P. Equity Homes, Inc	NY	165,914
H.O.M.E.E. CLINIC, INC	NY	131,936
Harlem United Community AIDS Center	NY	364,817
Harlem United Community AIDS Center	NY	227,834
HELP Social Service Corporation	NY	1,008,349
HELP Social Service Corporation	NY	791,172
HELP Suffolk Inc	NY	127,897
Helping Hands Unlimited	NY	160,886
Heritage Health and Housing, Inc	NY	159,935
Heritage Health and Housing, Inc	NY	249,494
Heritage Health and Housing, Inc	NY	330,486
Heritage Health and Housing, Inc	NY	110,528
Homeless Action Committee, Inc	NY	79,747
Homeless Action Committee, Inc	NY	69,974
Homeless Alliance of Western New York, Inc	NY	156,450
Homeless and Travelers Aid Society of the Capital District,	NY	113,701
Homeless and Travelers Aid Society of the Capital District,	NY	186,957
Homeless and Travelers Aid Society of the Capital District,	NY	80,523
Housing + Solutions	NY	313,584

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Housing + Solutions	NY	231,676
Housing + Solutions	NY	156,549
Housing Options Made Easy, Inc	NY	227,772
Housing Options Made Easy, Inc	NY	165,318
Housing Works, Inc	NY	371,276
Housing Works, Inc	NY	333,635
Housing Works, Inc	NY	286,535
Housing Works, Inc	NY	469,535
Hudson River Housing, Inc	NY	40,274
Hudson River Housing, Inc	NY	34,913
Hudson River Housing, Inc	NY	138,842
Hudson River Housing, Inc	NY	133,663
Human Services Coalition of Cayuga County Inc	NY	15,460
Independent Living, Inc	NY	60,315
Independent Living, Inc	NY	129,885
Institute for Community Living, Inc	NY	141,627
Institute for Community Living, Inc	NY	230,945
Institute for Community Living, Inc	NY	240,060
Institute for Community Living, Inc	NY	315,787
Institute for Community Living, Inc	NY	377,444
Institute for Community Living, Inc	NY	126,394
Institute for Community Living, Inc	NY	672,657
Institute for Community Living, Inc	NY	181,207
Institute for Community Living, Inc	NY	26,496
Institute for Community Living, Inc	NY	109,319
Institute for Community Living, Inc	NY	126,395
Interfaith Nutrition Network	NY	34,959
Interfaith Partnership for the Homeless	NY	145,105
Interfaith Partnership for the Homeless	NY	53,683
JCTOD Outreach, Inc. dba Johnson Park Center	NY	200,771
Jefferson County Department of Social Services	NY	23,256
Jefferson County Department of Social Services	NY	263,568
Jericho Project	NY	49,671
Jewish Board of Family and Children's Services, Inc	NY	283,500
Jewish Board of Family and Children's Services, Inc	NY	415,395
Joseph's House and Shelter, Inc	NY	61,493
Joseph's House and Shelter, Inc	NY	55,491
Joseph's House and Shelter, Inc	NY	70,000
Kenmore Housing Development Fund Corp	NY	390,576
Lakeview Mental Health	NY	84,091
Lantern Community Services	NY	630,000
Legal Aid Society of Northeastern New York	NY	33,183
Legal Aid Society of Northeastern New York	NY	30,120
Legal Aid Society of Northeastern New York	NY	35,595
Legal Assistance of Western New York, Inc	NY	33,600
Lenox Hill Neighborhood House	NY	285,998
Liberty Resources, Inc	NY	63,355
Long Island Coalition for the Homeless	NY	63,000
Long Island Coalition for the Homeless	NY	21,000
Long Island Coalition for the Homeless	NY	134,400
Long Island Coalition for the Homeless	NY	79,573
Long Island Coalition for the Homeless	NY	70,000
Lower Eastside Service Center, Inc	NY	492,100
Lower Eastside Service Center, Inc	NY	300,000
Lutheran Social Services of New York	NY	210,000
Lutheran Social Services of New York	NY	397,950
Mental Health America of Dutchess County	NY	54,250
Mental Health Association in Orange County, Inc	NY	244,472
Mental Health Association in Ulster County Inc	NY	58,209
Mental Health Association of Nassau County	NY	205,475
Mental Health Association of New York City, Inc	NY	584,272
Mental Health Association of New York City, Inc	NY	291,244
MercyHaven, Inc	NY	10,194
Metropolitan Council on Jewish Poverty	NY	99,942
Mohawk Opportunities, Inc	NY	125,347
Mohawk Opportunities, Inc	NY	72,612
Mohawk Opportunities, Inc	NY	56,355
MOMMAS, Inc	NY	57,135
Monroe County	NY	51,030
MTI Residential Services Inc	NY	217,003
MTI Residential Services Inc	NY	165,608
MTI Residential Services Inc	NY	173,820

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Nassau County Coalition Against Domestic Violence	NY	136,603
Nassau County Coalition Against Domestic Violence	NY	105,202
Nassau County Coalition Against Domestic Violence	NY	122,356
Nassau/Suffolk Law Services Committee, Inc	NY	69,616
Nassau/Suffolk Law Services Committee, Inc	NY	69,616
Nassau/Suffolk Law Services Committee, Inc	NY	54,090
Neighborhood Coalition for Shelter	NY	243,070
Newburgh Interfaith Emergency Housing Inc	NY	102,234
NYC Department of Housing Preservation and Development	NY	559,680
NYC Department of Housing Preservation and Development	NY	643,632
NYC Department of Housing Preservation and Development	NY	65,640
NYC Department of Housing Preservation and Development	NY	447,744
NYC Department of Housing Preservation and Development	NY	601,656
NYC Department of Housing Preservation and Development	NY	475,728
NYC Department of Housing Preservation and Development	NY	601,656
NYC Department of Housing Preservation and Development	NY	475,728
NYC Department of Housing Preservation and Development	NY	559,680
NYC Department of Housing Preservation and Development	NY	559,680
NYC Department of Housing Preservation and Development	NY	349,800
NYC Department of Housing Preservation and Development	NY	898,596
NYC Department of Housing Preservation and Development	NY	1,049,400
NYC Department of Housing Preservation and Development	NY	839,520
NYC Department of Housing Preservation and Development	NY	475,728
NYC Department of Housing Preservation and Development	NY	783,552
NYC Department of Housing Preservation and Development	NY	1,007,424
NYC Department of Housing Preservation and Development	NY	580,800
NYC Department of Housing Preservation and Development	NY	279,840
NYC Department of Housing Preservation and Development	NY	475,728
NYC Department of Housing Preservation and Development	NY	810,048
NYC Department of Housing Preservation and Development	NY	1,399,200
NYC Department of Housing Preservation and Development	NY	1,189,320
NYC Department of Housing Preservation and Development	NY	319,104
NYC Department of Housing Preservation and Development	NY	699,600
NYC Department of Housing Preservation and Development	NY	632,748
NYC Department of Housing Preservation and Development	NY	447,744
NYC Department of Housing Preservation and Development	NY	405,768
NYC Department of Housing Preservation and Development	NY	1,958,880
NYC Department of Housing Preservation and Development	NY	447,744
NYC Department of Housing Preservation and Development	NY	321,816
NYC Department of Housing Preservation and Development	NY	263,868
NYC Department of Housing Preservation and Development	NY	699,600
NYC Department of Housing Preservation and Development	NY	469,092
NYC Department of Housing Preservation and Development	NY	699,600
NYC Department of Housing Preservation and Development	NY	559,680
NYC Department of Housing Preservation and Development	NY	979,440
NYC Department of Housing Preservation and Development	NY	601,656
NYC Department of Housing Preservation and Development	NY	601,656
NYC Department of Housing Preservation and Development	NY	1,762,992
NYC Department of Housing Preservation and Development	NY	503,712
NYC Department of Housing Preservation and Development	NY	601,656
NYC Department of Housing Preservation and Development	NY	4,210,260
NYC Department of Housing Preservation and Development	NY	615,648
NYC Department of Housing Preservation and Development	NY	503,712
NYC Department of Housing Preservation and Development	NY	377,784
NYC Department of Housing Preservation and Development	NY	209,880
NYS Office of Alcoholism and Substance Abuse Services	NY	198,708
NYS Office of Alcoholism and Substance Abuse Services	NY	932,244
NYS Office of Alcoholism and Substance Abuse Services	NY	99,960
NYS Office of Alcoholism and Substance Abuse Services	NY	151,320
NYS Office of Alcoholism and Substance Abuse Services	NY	420,948
NYS Office of Alcoholism and Substance Abuse Services	NY	82,824
NYS Office of Alcoholism and Substance Abuse Services	NY	764,556
NYS Office of Alcoholism and Substance Abuse Services	NY	275,220
NYS Office of Alcoholism and Substance Abuse Services	NY	110,844
NYS Office of Alcoholism and Substance Abuse Services	NY	479,388
NYS Office of Alcoholism and Substance Abuse Services	NY	320,592
NYS Office of Alcoholism and Substance Abuse Services	NY	759,348
NYS Office of Alcoholism and Substance Abuse Services	NY	215,256
NYS Office of Alcoholism and Substance Abuse Services	NY	145,332
NYS Office of Alcoholism and Substance Abuse Services	NY	129,576
NYS Office of Alcoholism and Substance Abuse Services	NY	202,968
NYS Office of Alcoholism and Substance Abuse Services	NY	367,092

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
NYS Office of Alcoholism and Substance Abuse Services	NY	144,708
NYS Office of Alcoholism and Substance Abuse Services	NY	158,736
NYS Office of Alcoholism and Substance Abuse Services	NY	223,680
NYS Office of Alcoholism and Substance Abuse Services	NY	162,012
NYS Office of Alcoholism and Substance Abuse Services	NY	135,048
NYS Office of Alcoholism and Substance Abuse Services	NY	302,640
NYS Office of Alcoholism and Substance Abuse Services	NY	509,004
NYS Office of Alcoholism and Substance Abuse Services	NY	765,816
NYS Office of Alcoholism and Substance Abuse Services	NY	332,904
NYS Office of Alcoholism and Substance Abuse Services	NY	105,132
NYS Office of Alcoholism and Substance Abuse Services	NY	195,492
NYS Office of Alcoholism and Substance Abuse Services	NY	199,992
NYS Office of Alcoholism and Substance Abuse Services	NY	229,752
NYS Office of Alcoholism and Substance Abuse Services	NY	144,444
NYS Office of Alcoholism and Substance Abuse Services	NY	196,716
NYS Office of Alcoholism and Substance Abuse Services	NY	216,384
NYS Office of Alcoholism and Substance Abuse Services	NY	200,124
NYS Office of Alcoholism and Substance Abuse Services	NY	218,544
NYS Office of Alcoholism and Substance Abuse Services	NY	134,688
NYS Office of Alcoholism and Substance Abuse Services	NY	121,728
NYS Office of Alcoholism and Substance Abuse Services	NY	239,040
NYS Office of Mental Health	NY	156,408
NYS Office of Mental Health	NY	101,304
NYS Office of Mental Health	NY	341,004
NYS Office of Mental Health	NY	182,232
NYS Office of Mental Health	NY	39,864
NYS Office of Mental Health	NY	95,760
NYS Office of Mental Health	NY	202,608
NYS Office of Mental Health	NY	510,132
NYS Office of Mental Health	NY	125,928
NYS Office of Mental Health	NY	106,596
NYS Office of Mental Health	NY	306,960
NYS Office of Mental Health	NY	253,260
NYS Office of Mental Health	NY	367,500
NYS Office of Mental Health	NY	479,988
NYS Office of Mental Health	NY	371,628
NYS Office of Mental Health	NY	301,500
NYS Office of Mental Health	NY	179,304
NYS Office of Mental Health	NY	112,692
NYS Office of Mental Health	NY	173,448
NYS Office of Mental Health	NY	593,880
NYS Office of Mental Health	NY	218,712
NYS Office of Mental Health	NY	395,436
NYS Office of Mental Health	NY	163,368
NYS Office of Mental Health	NY	353,100
Oneida County Department of Mental Health	NY	14,927
Oneida County Department of Mental Health	NY	104,900
Oneida County Department of Mental Health	NY	37,483
Oneida County Workforce Development	NY	39,900
Onondaga Case Management Services, Inc	NY	234,486
Options for Community Living, Inc	NY	86,706
Options for Community Living, Inc	NY	48,622
Options for Community Living, Inc	NY	85,870
Options for Community Living, Inc	NY	80,563
Options for Community Living, Inc	NY	119,592
Options for Community Living, Inc	NY	49,804
Options for Independence	NY	73,960
Options for Independence	NY	79,540
Orange County	NY	67,968
Orange County	NY	67,968
Palladia, Inc	NY	458,882
Palladia, Inc	NY	158,957
Palladia, Inc	NY	492,830
Palladia, Inc	NY	137,536
Palladia, Inc	NY	265,599
Palladia, Inc	NY	282,790
Palladia, Inc	NY	830,975
Palladia, Inc	NY	704,884
Palladia, Inc	NY	265,060
Palladia, Inc	NY	556,583
PathStone Corporation	NY	65,450
PathStone Corporation	NY	16,687

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Pathways to Housing Inc	NY	274,156
Pathways to Housing Inc	NY	538,701
Pathways to Housing Inc	NY	154,015
Pathways to Housing Inc	NY	426,777
Pathways to Housing Inc	NY	584,268
Phase Piggy Back Inc	NY	305,947
Phase Piggy Back Inc	NY	137,838
Pibly Residential Programs, Inc	NY	463,234
Plattsburgh Housing Authority	NY	110,712
Plattsburgh Housing Authority	NY	55,356
Postgraduate Center for Mental Health	NY	472,677
Praxis Housing Initiatives, Inc	NY	800,633
Project Hospitality 385 Housing Development Fund Corporation	NY	477,034
Project Hospitality, Inc	NY	371,843
Project Renewal, Inc	NY	409,798
Project Renewal, Inc	NY	328,300
Project Renewal, Inc	NY	135,568
Project Renewal, Inc	NY	428,982
Project Renewal, Inc	NY	670,770
Project Renewal, Inc	NY	322,845
Project Renewal, Inc	NY	532,669
Projects to Empower and Organize the Psychiatrically Labeled	NY	82,152
Projects to Empower and Organize the Psychiatrically Labeled	NY	58,999
Providence Housing Development Corporation	NY	602,168
Regional Economic Community Action Program, Inc	NY	72,376
Rehabilitation Support Services	NY	60,119
Rehabilitation Support Services	NY	66,381
Rehabilitation Support Services	NY	104,372
Rehabilitation Support Services, Inc	NY	69,865
Rochester Housing Authority	NY	157,920
Rochester Housing Authority	NY	90,360
Rochester Housing Authority	NY	522,000
Rochester Housing Authority	NY	186,852
Rochester Housing Authority	NY	2,268,504
Rochester Housing Authority	NY	880,692
Rochester Housing Authority	NY	357,120
Rochester Housing Authority	NY	725,784
Rochester Housing Authority	NY	208,836
Rochester Housing Authority	NY	324,600
Rockland County, New York	NY	105,833
Rockland County, New York	NY	74,000
Rockland County, New York	NY	215,610
Safe Harbors of the Hudson, Inc	NY	157,500
SAFE Inc., of Schenectady	NY	48,267
Safe Space NYC Inc	NY	225,610
Samaritan Village, Inc	NY	342,709
Samaritan Village, Inc	NY	183,750
Saratoga County Rural Preservation Company	NY	43,417
Schenectady Community Action Program, Inc	NY	145,166
Schenectady Community Action Program, Inc	NY	163,231
Schenectady Community Action Program, Inc	NY	165,905
Schenectady Community Action Program, Inc	NY	110,205
Schenectady Municipal Housing Authority	NY	467,232
Services for the UnderServed, Inc	NY	141,516
Services for the UnderServed, Inc	NY	404,203
Services for the UnderServed, Inc	NY	345,362
Services for the UnderServed, Inc	NY	536,347
Services for the UnderServed, Inc	NY	74,812
Services for the UnderServed, Inc	NY	210,728
Services for the UnderServed, Inc	NY	588,490
Society of St. Vincent de Paul, Diocesan Council of RVC	NY	103,571
Society of St. Vincent de Paul, Diocesan Council of RVC	NY	252,559
Society of St. Vincent de Paul, Diocesan Council of RVC	NY	257,300
Society of St. Vincent de Paul, Diocesan Council of RVC	NY	166,135
Society of St. Vincent de Paul, Diocesan Council of RVC	NY	214,894
Society of St. Vincent de Paul, Diocesan Council of RVC	NY	154,509
Sojourner House at PathStone, Inc	NY	135,640
Sojourner House at PathStone, Inc	NY	89,273
South shore Association for Independent Living, Inc	NY	92,922
South shore Association for Independent Living, Inc	NY	148,713
South shore Association for Independent Living, Inc	NY	225,038
Southern Tier Environments for Living, Inc	NY	56,516

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Spanish Action League of Onondaga County, Inc	NY	33,247
Spiritus Christi Prison Outreach, Inc	NY	143,149
Spiritus Christi Prison Outreach, Inc	NY	94,500
Spiritus Christi Prison Outreach, Inc	NY	80,000
Steuben Churchpeople Against Poverty, Inc	NY	68,137
Steuben County	NY	426,168
Suburban Housing Development & Research, Inc	NY	55,836
Suburban Housing Development & Research, Inc	NY	38,451
Suburban Housing Development & Research, Inc	NY	123,680
Suburban Housing Development & Research, Inc	NY	42,000
Suffolk County United Veterans	NY	69,908
Support Ministries, Inc	NY	112,137
Support Ministries, Inc	NY	91,705
Syracuse Brick House Inc	NY	182,292
Syracuse Brick House Inc	NY	111,286
Syracuse Brick House Inc	NY	272,450
Syracuse Brick House Inc	NY	105,256
Syracuse Brick House Inc	NY	83,988
Syracuse Brick House Inc	NY	95,899
Syracuse Brick House Inc	NY	95,252
Syracuse Brick House Inc	NY	221,092
Syracuse Brick House Inc	NY	187,426
Syracuse Housing Authority	NY	1,844,280
Syracuse Housing Authority	NY	759,432
Tempro Development co. Inc	NY	126,622
The Bridge Inc	NY	112,163
The Bridge Inc	NY	366,262
The Bridge Inc	NY	115,431
The Bridge Inc	NY	304,581
The Bridge Inc	NY	101,909
The Bridge Inc	NY	224,339
The Center for Youth Services, Inc	NY	33,251
The Center for Youth Services, Inc	NY	126,871
The City of New York Department of Homeless Services	NY	545,459
The City of New York Department of Homeless Services	NY	728,535
The Doe Fund, Inc	NY	348,447
The Doe Fund, Inc	NY	1,062,269
The Doe Fund, Inc	NY	1,951,512
The Fortune Society, Inc	NY	448,157
The Mental Health Association of Columbia-Greene Counties,	NY	78,210
The Mental Health Association of Columbia-Greene Counties,	NY	29,932
The Mental Health Association of Columbia-Greene Counties,	NY	20,483
The Municipal Housing Authority for the City of Yonkers	NY	20,256
The Municipal Housing Authority for the City of Yonkers	NY	48,729
The Municipal Housing Authority for the City of Yonkers	NY	450,840
The Municipal Housing Authority for the City of Yonkers	NY	236,659
The Municipal Housing Authority for the City of Yonkers	NY	32,333
The Municipal Housing Authority for the City of Yonkers	NY	102,274
The Municipal Housing Authority for the City of Yonkers	NY	20,256
The Municipal Housing Authority for the City of Yonkers	NY	73,049
The Municipal Housing Authority for the City of Yonkers	NY	105,000
The Municipal Housing Authority for the City of Yonkers	NY	46,034
The Municipal Housing Authority for the City of Yonkers	NY	180,713
The Rescue Mission Alliance of Syracuse, NY	NY	100,000
The Salvation Army	NY	51,427
The Salvation Army	NY	83,702
The Salvation Army	NY	221,056
The Salvation Army	NY	99,999
The Salvation Army	NY	115,448
The Salvation Army	NY	163,244
The Salvation Army	NY	52,789
The Salvation Army	NY	236,697
The Salvation Army	NY	293,290
Tompkins Community Action, Inc	NY	84,713
Tompkins Community Action, Inc	NY	60,126
Transitional Services Association, Inc	NY	34,721
Transitional Services of New York for Long Island, Inc	NY	57,456
Troy Housing Authority	NY	102,384
Troy Housing Authority	NY	230,988
Troy Housing Authority	NY	35,376
Troy Housing Authority	NY	57,564
Troy Housing Authority	NY	89,544

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Troy Housing Authority	NY	26,532
Troy Housing Authority	NY	250,188
Ulster County Department of Social Services	NY	179,472
Ulster County Department of Social Services	NY	309,456
United Bronx Parents, Inc	NY	419,528
United Cerebral Palsy and Handicapped Persons Association	NY	175,085
United Church Home, Inc	NY	654,525
United Veterans Beacon House, Inc	NY	136,099
Unity House of Troy, Inc	NY	625,830
Unity House of Troy, Inc	NY	61,454
Unity House of Troy, Inc	NY	183,170
University Consultation & Treatment Center for Mental Hygien	NY	244,998
Urban Justice Center	NY	142,711
Urban Justice Center	NY	109,686
Urban Pathways, Inc	NY	357,451
Urban Pathways, Inc	NY	174,673
Urban Pathways, Inc	NY	149,030
Urban Resource Institute	NY	250,294
Veritas Therapeutic Community Inc	NY	273,347
Veritas Therapeutic Community Inc	NY	102,678
Veterans Outreach Center	NY	76,127
Violence Intervention Program, Inc	NY	324,920
Vocational Instruction Project Community Services, Inc	NY	227,666
Vocational Instruction Project Community Services, Inc	NY	278,854
Vocational Instruction Project Community Services, Inc	NY	90,016
Volunteers of America of Western New York, Inc	NY	166,000
Volunteers of America of Western New York, Inc	NY	430,000
Volunteers of America of Western New York, Inc	NY	692,850
Warren Washington Association for Mental Health	NY	38,608
Warren Washington Association for Mental Health	NY	39,099
Warren Washington Association for Mental Health	NY	16,065
Wayne County Action Program, Inc	NY	22,256
Wayne County Action Program, Inc	NY	50,826
West Side Federation for Senior and Supportive Housing, Inc	NY	362,197
West Side Federation for Senior and Supportive Housing, Inc	NY	155,715
West Side Federation for Senior and Supportive Housing, Inc	NY	110,205
Westchester County Dept. of Social Services	NY	100,000
Westchester County Dept. of Social Services	NY	48,530
Westchester County Dept. of Social Services	NY	105,000
Westchester County Dept. of Social Services	NY	525,185
Westchester County Dept. of Social Services	NY	30,000
Westchester County Dept. of Social Services	NY	121,776
Westchester County Dept. of Social Services	NY	205,485
Westchester County Dept. of Social Services	NY	345,652
Weston United Community Renewal, Inc	NY	224,900
Wilson Commencement Park	NY	139,025
Women In Need, Inc	NY	446,787
Women In Need, Inc	NY	327,681
Women In Need, Inc	NY	326,070
Women In Need, Inc	NY	405,062
Women In Need, Inc	NY	363,711
Women In Need, Inc	NY	265,059
Women In Need, Inc	NY	325,270
Y.W.C.A. of the Mohawk Valley	NY	161,836
Y.W.C.A. of the Mohawk Valley	NY	354,107
YMCA of Greater New York	NY	570,504
Young Women's Christian Association of Syracuse & Onondaga C	NY	165,768
YWCA of Binghamton/Broome County	NY	152,077
YWCA of Binghamton/Broome County	NY	107,081
YWCA of Binghamton/Broome County	NY	99,074
YWCA of Rochester and Monroe County	NY	123,781
YWCA of Schenectady	NY	211,271
YWCA of the Greater Capital Region	NY	76,958
YWCA of the Greater Capital Region	NY	26,250
YWCA of the Tonawandas and Niagara Frontier, Inc	NY	31,271
YWCA of Western New York, Inc	NY	70,367
300 Beds, Inc./Harbor House	OH	117,551
ACCESS, Inc	OH	118,711
Akron Metropolitan Housing Authority	OH	247,716
Akron Metropolitan Housing Authority	OH	73,752
Akron Metropolitan Housing Authority	OH	200,784
Akron Metropolitan Housing Authority	OH	441,996

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Allen Metropolitan Housing Authority	OH	178,200
Alliance for Children & Families	OH	126,786
Alliance for Children & Families	OH	202,003
Amethyst, Inc	OH	163,120
Appleseed Community Mental Health Center, Inc	OH	67,549
Ashtabula County Mental Health and Recovery Services Board	OH	316,992
Athens Metropolitan Housing Authority	OH	164,040
Athens Metropolitan Housing Authority	OH	219,108
Aurora Project, Inc	OH	103,772
Beatitude House	OH	207,028
Beatitude House	OH	141,334
Beatitude House	OH	134,435
Bethany House Services, Inc	OH	316,538
Bethany House Services, Inc	OH	26,174
Catholic Charities Diocese of Toledo, Inc	OH	128,108
Catholic Charities Diocese of Toledo, Inc	OH	89,397
Catholic Charities Diocese of Toledo, Inc	OH	86,552
Catholic Charities Regional Agency	OH	51,888
Center for Respite Care, Inc	OH	314,386
Center for Respite Care, Inc	OH	159,420
Cincinnati/Hamilton County CoC for the Homeless, Inc	OH	285,701
Cincinnati/Hamilton County CoC for the Homeless, Inc	OH	95,645
CincySmiles Foundation	OH	179,765
City of Cincinnati	OH	117,600
City of Cincinnati	OH	5,089,308
City of Cincinnati	OH	276,696
City of Cincinnati	OH	858,060
City of Cincinnati	OH	422,520
City of Cincinnati	OH	441,000
City of Dayton, Ohio	OH	443,856
City of Dayton, Ohio	OH	1,885,464
City of Dayton, Ohio	OH	160,080
City of Springfield	OH	31,680
City of Youngstown	OH	249,840
Cleveland Tenants Organization	OH	52,500
Cogswell Hall, Inc	OH	97,735
Coleman Professional Services	OH	89,462
Coleman Professional Services	OH	70,000
Coleman Professional Services	OH	70,927
Coleman Professional Services	OH	31,521
Columbiana County Mental Health Clinic dba The Counseling Ce	OH	36,667
Columbiana Metropolitan Housing Authority	OH	224,028
Columbiana Metropolitan Housing Authority	OH	30,240
Columbiana Metropolitan Housing Authority	OH	30,240
Columbus Metropolitan Housing Authority	OH	1,214,460
Columbus Metropolitan Housing Authority	OH	1,313,004
Columbus Metropolitan Housing Authority	OH	687,708
Columbus Metropolitan Housing Authority	OH	119,400
Columbus Metropolitan Housing Authority	OH	735,564
Columbus Metropolitan Housing Authority	OH	93,480
Community Action Agency of Columbiana County, Inc	OH	95,730
Community Action Commission of Fayette County	OH	64,914
Community Action Partnership of the Greater Dayton Area	OH	56,371
Community Health Center	OH	29,049
Community Health Center	OH	73,165
Community Health Center	OH	116,475
Community Housing Network, Inc	OH	226,315
Community Housing Network, Inc	OH	245,103
Community Housing Network, Inc	OH	260,673
Community Housing Network, Inc	OH	97,293
Community Housing Network, Inc	OH	184,834
Community Housing Network, Inc	OH	236,416
Community Housing Network, Inc	OH	35,233
Community Housing Network, Inc	OH	298,939
Community Housing Network, Inc	OH	656,422
Community Housing Network, Inc	OH	87,316
Community Housing Network, Inc	OH	83,283
Community Housing Network, Inc	OH	59,060
Community Legal Aid Services, Inc	OH	17,850
Community Services of Stark County, Inc	OH	133,333
Community Shelter Board	OH	166,413
Community Support Services Inc	OH	396,824

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Community Support Services, Inc	OH	878,580
Community Support Services, Inc	OH	162,365
Continue Life Inc	OH	212,973
Crisis Intervention and Recovery Center, Inc	OH	62,132
Cuyahoga County	OH	9,874,464
Cuyahoga County	OH	148,236
Cuyahoga County	OH	174,731
Cuyahoga County	OH	317,109
Cuyahoga County	OH	77,167
Cuyahoga County	OH	157,872
Cuyahoga County	OH	432,600
Cuyahoga County	OH	302,400
Cuyahoga County	OH	270,705
Cuyahoga County	OH	537,741
Cuyahoga County	OH	447,540
Cuyahoga Metropolitan Housing Authority	OH	386,373
Daybreak, Inc	OH	410,868
Daybreak, Inc	OH	191,774
Emerald Development & Economic Network (EDEN), Inc	OH	468,367
Emerald Development & Economic Network (EDEN), Inc	OH	703,431
Emerald Development & Economic Network (EDEN), Inc	OH	335,036
Emerald Development & Economic Network (EDEN), Inc	OH	471,666
Emerald Development & Economic Network (EDEN), Inc	OH	555,615
Emerald Development & Economic Network (EDEN), Inc	OH	572,959
Emerald Development & Economic Network (EDEN), Inc	OH	27,276
Family & Community Services, Inc	OH	184,701
Family & Community Services, Inc	OH	37,124
Family & Community Services, Inc	OH	45,933
Family & Community Services, Inc	OH	118,356
Family Abuse Shelter of Miami County, Inc	OH	42,000
Family Abuse Shelter of Miami County, Inc	OH	16,000
Family Outreach Community United Services	OH	119,220
Family Outreach Community United Services	OH	404,981
Family Outreach Community United Services	OH	88,915
Family Outreach Community United Services	OH	271,820
Family Outreach Community United Services	OH	308,076
Family Recovery Center	OH	70,606
Family Violence Prevention Center of Greene County, Inc	OH	56,293
Family Violence Prevention Center of Greene County, Inc	OH	66,761
Findlay Hope House for the Homeless, Inc	OH	624,201
Freestore/Foodbank, Inc	OH	72,886
Freestore/Foodbank, Inc	OH	170,449
Geauga County Board of Mental Health & Recovery Services	OH	89,040
Greene Metropolitan Housing Authority	OH	147,768
H. M. Life Opportunity Services	OH	179,584
Hitchcock Center For Women, Inc	OH	275,403
Hitchcock Center For Women, Inc	OH	236,841
Hocking Metropolitan Housing Authority	OH	215,184
Homefull	OH	174,394
Huckleberry House, Inc	OH	235,406
Humility of Mary	OH	76,624
Humility of Mary	OH	32,322
ICAN Inc	OH	100,497
ICAN Inc	OH	86,692
ICAN Inc	OH	77,350
ICAN Inc	OH	48,134
ICAN Inc	OH	89,860
ICAN Inc	OH	46,856
Interfaith Hospitality Network of Greater Cincinnati	OH	529,494
Interfaith Hospitality Network of Springfield, Inc	OH	212,719
Ironton Lawrence County Area Community Action Organization I	OH	104,200
Jefferson County Community Action Council	OH	138,432
Jefferson County Prevention and Recovery Board	OH	234,372
Jefferson County Prevention and Recovery Board	OH	354,632
JOSEPH HOUSE, INC	OH	77,049
JOSEPH HOUSE, INC	OH	107,660
Joseph's Home	OH	273,056
Knox Metropolitan Housing Authority	OH	135,468
Lake County Alcohol, Drug Addiction and Mental Health Servic	OH	216,744
Lake County Alcohol, Drug Addiction and Mental Health Servic	OH	430,560
Lakewood Christian Service Center	OH	41,398
Legacy III, Inc	OH	360,408

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Legacy III, Inc	OH	75,920
Licking County Coalition for Housing	OH	588,371
Licking Metropolitan Housing Authority	OH	106,080
Licking Metropolitan Housing Authority	OH	202,428
Lighthouse Youth Services, Inc	OH	31,808
Lighthouse Youth Services, Inc	OH	363,258
Lighthouse Youth Services, Inc	OH	147,025
Lighthouse Youth Services, Inc	OH	100,601
Lorain Metropolitan Housing Authority	OH	509,280
Lucas Co. TASC, Inc	OH	92,830
Lucas Co. TASC, Inc	OH	212,595
Lutheran Metropolitan Ministry	OH	50,157
Maryhaven	OH	48,015
Maryhaven	OH	137,936
McKinley Hall, Inc	OH	40,615
Medina County Alcohol, Drug Addiction and Mental Health Boar	OH	199,207
Medina Metropolitan Housing Authority	OH	345,504
Mental Health & Recovery Board of Union County	OH	73,361
Mental Health & Recovery Board of Union County	OH	60,580
Mental Health and Recovery Services Board of Lucas County	OH	94,140
Mental Health and Recovery Services Board of Lucas County	OH	393,486
Mental Health and Recovery Services Board of Lucas County	OH	241,752
Mental Health and Recovery Services Board of Stark County	OH	105,437
Mental Health and Recovery Services Board of Stark County	OH	47,957
Mental Health Services for Homeless Persons, Inc	OH	264,099
Mental Health Services for Homeless Persons, Inc	OH	39,032
Mental Health Services for Homeless Persons, Inc	OH	229,897
Mental Health Services for Homeless Persons, Inc	OH	469,586
Mental Health Services for Homeless Persons, Inc	OH	456,968
Mental Health Services for Homeless Persons, Inc	OH	446,546
Mental Health Services for Homeless Persons, Inc	OH	459,931
Mental Health Services for Homeless Persons, Inc	OH	509,646
Mental Health Services for Homeless Persons, Inc	OH	206,741
Mental Health Services for Homeless Persons, Inc	OH	1,318,590
Mental Health, Drug and Alcohol Services Board	OH	40,348
Mercy Manor, Inc	OH	101,718
Meridian Services, Inc	OH	136,786
Meridian Services, Inc	OH	80,876
Meridian Services, Inc	OH	124,640
Meridian Services, Inc	OH	113,300
Meridian Services, Inc	OH	35,945
Miami Valley Housing Opportunities, Inc	OH	50,364
Miami Valley Housing Opportunities, Inc	OH	429,583
Miami Valley Housing Opportunities, Inc	OH	127,105
Montgomery County Board of County Commissioners	OH	137,898
National Church Residences	OH	424,210
National Church Residences	OH	250,092
Neighborhood Health Association of Toledo, Inc	OH	52,979
Neighborhood Properties, Inc	OH	77,675
Neighborhood Properties, Inc	OH	229,249
Neighborhood Properties, Inc	OH	239,499
Neighborhood Properties, Inc	OH	180,088
Neighborhood Properties, Inc	OH	108,889
Neighborhood Properties, Inc	OH	90,649
Neighborhood Properties, Inc	OH	73,975
New Life Community	OH	55,643
New Sunrise Properties, Inc	OH	28,137
North Coast Community Homes, Inc	OH	33,468
Ohio Department of Development	OH	212,536
Ohio Department of Development	OH	245,000
Ohio Multi-County Development Corporation	OH	126,029
Ohio Multi-County Development Corporation	OH	360,628
Ohio Valley Goodwill Industries Rehabilitation Center, Inc	OH	172,001
Oriana House, Inc	OH	15,225
Otis Gibbs Helping Hand Center	OH	109,922
Over-the-Rhine Community Housing	OH	56,037
Pickaway County Community Action Organization, Inc	OH	123,145
PLACES, Inc	OH	71,081
PLACES, Inc	OH	214,781
PLACES, Inc	OH	735,220
PLACES, Inc	OH	490,117
Portage Metropolitan Housing Authority	OH	184,380

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Preparation for Adult Living (PAL) Mission	OH	66,666
Project Woman of Springfield and Clark County	OH	35,679
Residential Administrators, Inc	OH	102,721
Residential Administrators, Inc	OH	95,962
Shelterhouse Volunteer Group	OH	93,000
Shelterhouse Volunteer Group	OH	247,062
Southeast, Inc	OH	260,680
Springfield District Council of the St Vincent de Paul Socie	OH	23,040
Springfield Metropolitan Housing Authority	OH	107,448
St. Paul's Community Center	OH	183,816
St. Paul's Community Center	OH	399,487
St. Vincent de Paul Social Services, Inc	OH	181,200
St. Vincent de Paul Social Services, Inc	OH	106,910
St. Vincent de Paul Social Services, Inc	OH	109,410
Stark Metropolitan Housing Authority	OH	167,628
Stark Metropolitan Housing Authority	OH	178,920
Stark Metropolitan Housing Authority	OH	413,688
Summit County Children Services	OH	115,643
Talbert House	OH	165,000
Tender Mercies, Inc	OH	299,491
Tender Mercies, Inc	OH	58,630
The AIDS Taskforce of Greater Cleveland	OH	111,330
The AIDS Taskforce of Greater Cleveland	OH	75,655
The Center for Individual and Family Services	OH	56,066
The Salvation Army	OH	178,615
The Salvation Army	OH	29,644
Tom Geiger Guest House, Inc	OH	52,500
Transitional Housing, Inc	OH	122,528
Tri-County Board of Recovery & Mental Health Services	OH	36,408
Trumbull Mental Health and Recovery Board	OH	230,436
Trumbull Mental Health and Recovery Board	OH	97,767
Trumbull Mental Health and Recovery Board	OH	1,395,720
Tuscarawas Metropolitan Housing Authority	OH	132,744
Volunteers of America Northwest Ohio, Inc	OH	286,661
Volunteers of America Northwest Ohio, Inc	OH	291,955
Volunteers of America of Greater Ohio	OH	357,325
Volunteers of America of Greater Ohio	OH	262,500
Volunteers of America of Greater Ohio, Inc	OH	246,967
Volunteers of America of Greater Ohio, Inc	OH	79,155
Warren Metropolitan Housing Authority	OH	184,574
Warren Metropolitan Housing Authority	OH	390,159
West Side Catholic Center	OH	120,901
West Side Catholic Center	OH	19,339
West Side Catholic Center	OH	127,829
West Side Catholic Center	OH	97,182
WSOS Community Action Commission, Inc	OH	53,774
WSOS Community Action Commission, Inc	OH	435,196
WSOS Community Action Commission, Inc	OH	293,822
YMCA of Greater Cleveland	OH	905,203
YMCA of Greater Cleveland	OH	187,351
Young Women's Christian Association	OH	162,559
Young Women's Christian Association	OH	99,015
Young Women's Christian Association of Canton	OH	47,951
Young Women's Christian Association of Youngstown, Ohio	OH	55,728
Young Women's Christian Association of Youngstown, Ohio	OH	136,595
Young Women's Christian Association of Youngstown, Ohio	OH	89,353
Young Women's Christian Association of Youngstown, Ohio	OH	105,248
Young Women's Christian Association of Youngstown, Ohio	OH	132,141
Youngstown Area Goodwill Industries, Inc	OH	72,063
Youngstown State University	OH	50,308
YWCA Dayton	OH	405,799
YWCA Dayton	OH	860,470
YWCA of Elyria	OH	116,706
YWCA of Elyria	OH	120,932
YWCA of Greater Cincinnati	OH	423,315
YWCA of Greater Cincinnati	OH	146,067
YWCA of Hamilton Ohio Inc	OH	119,320
Zanesville Metropolitan Housing Authority	OH	47,520
Central Oklahoma Community Action Agency, Inc	OK	34,075
Central Oklahoma Community Action Agency, Inc	OK	63,932
Central Oklahoma Community Action Agency, Inc	OK	34,571
Central Oklahoma Community Action Agency, Inc	OK	67,882

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
City of Oklahoma City	OK	134,840
City of Oklahoma City	OK	173,100
City of Oklahoma City	OK	16,824
City of Oklahoma City	OK	185,762
City of Oklahoma City	OK	69,240
City of Oklahoma City	OK	240,815
City of Oklahoma City	OK	134,647
City of Oklahoma City	OK	134,840
City of Oklahoma City	OK	51,710
City of Oklahoma City	OK	299,999
City of Oklahoma City	OK	89,872
City of Oklahoma City	OK	66,424
City of Oklahoma City	OK	79,999
City of Oklahoma City	OK	162,500
City of Oklahoma City	OK	73,001
City of Oklahoma City	OK	124,999
City of Oklahoma City	OK	358,654
Community Action Resource & Development, Inc	OK	13,718
Community Crisis Center, Inc	OK	50,129
Community Service Council of Greater Tulsa	OK	123,113
Domestic Violence Intervention Services, Inc	OK	149,369
Domestic Violence Program of North Central Oklahoma, Inc	OK	70,613
East Main Place, Inc	OK	43,895
Food & Shelter for Friends	OK	23,875
Food & Shelter for Friends	OK	51,337
Freedom From Addiction Through Christ	OK	199,646
Freedom From Addiction Through Christ	OK	43,632
Housing Authority of the City of Norman	OK	81,072
Lawton Housing Authority	OK	22,050
Lawton Housing Authority	OK	47,417
Legal Aid Services of Oklahoma, Inc	OK	111,919
Mental Health Association in Tulsa, Inc	OK	88,456
Mental Health Association in Tulsa, Inc	OK	87,500
Mental Health Association in Tulsa, Inc	OK	23,625
Mental Health Association in Tulsa, Inc	OK	222,768
Mental Health Association in Tulsa, Inc	OK	121,046
Mental Health Association in Tulsa, Inc	OK	223,133
Mental Health Association in Tulsa, Inc	OK	252,008
Mental Health Association in Tulsa, Inc	OK	213,113
Northeast Oklahoma Community Action Agency, Inc	OK	26,708
Northeast Oklahoma Community Action Agency, Inc	OK	31,370
Northwest Domestic Crisis Services, Inc	OK	118,544
Oklahoma Mental Health Council d/b/a Red Rock	OK	162,451
Southern Territorial Headquarters of the Salvation Army, The	OK	336,679
Southern Territorial Headquarters of the Salvation Army, The	OK	110,431
State of Oklahoma	OK	48,468
State of Oklahoma	OK	179,976
United Way of Ponca City, Inc	OK	44,765
Volunteers of America of Oklahoma, Inc	OK	77,914
Volunteers of America of Oklahoma, Inc	OK	125,481
Volunteers of America of Oklahoma, Inc	OK	103,663
Volunteers of America of Oklahoma, Inc	OK	211,941
Waynoka Mental Health Authority	OK	224,439
ACCESS, Inc	OR	10,901
Bradley-Angle House	OR	73,987
Cascadia Behavioral HealthCare	OR	15,384
Cascadia Behavioral HealthCare	OR	698,336
Cascadia Behavioral HealthCare	OR	271,872
Cascadia Behavioral HealthCare	OR	125,582
Central City Concern	OR	104,772
Central City Concern	OR	160,602
Central City Concern	OR	223,014
Central City Concern	OR	236,968
City of Portland	OR	241,074
City of Portland	OR	271,986
Clackamas County Department of Human Services	OR	114,200
Clackamas County Department of Human Services	OR	184,229
Clackamas County Department of Human Services	OR	102,154
Clackamas County Department of Human Services	OR	64,057
Clackamas County Department of Human Services	OR	29,977
Clackamas Women's Services	OR	81,290
Clatsop Community Action	OR	17,951

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Community Action	OR	165,218
Community Action Program of East Central Oregon	OR	72,574
Community Action Team, Inc	OR	28,996
Community Action Team, Inc	OR	99,110
Community Action Team, Inc	OR	26,767
Community Action Team, Inc	OR	67,594
Community Connection of Northeast Oregon, Inc	OR	37,748
Community Connection of Northeast Oregon, Inc	OR	56,658
Community Services Consortium	OR	76,122
Community Works	OR	119,700
County of Multnomah	OR	12,635
County of Multnomah	OR	462,083
County of Multnomah	OR	1,150,995
County of Multnomah	OR	142,142
County of Multnomah	OR	45,801
County of Multnomah	OR	278,736
Eastern Oregon Alcoholism Foundation, Inc	OR	35,467
Housing and Community Services Agency of Lane County	OR	423,132
Housing Authority of Clackamas County	OR	332,640
Housing Authority of Clackamas County	OR	71,886
Housing Authority of Portland	OR	268,164
Housing Authority of Portland	OR	1,944,384
Housing Authority of Portland	OR	483,696
Housing Authority of Portland	OR	511,272
Housing Authority of Portland	OR	399,684
Housing Authority of Portland	OR	470,592
Human Solutions, Inc	OR	51,905
Human Solutions, Inc	OR	104,928
Lane County	OR	30,835
Lane County	OR	174,549
Lane County	OR	527,903
Lane County	OR	131,705
Lane County	OR	323,346
Lane County	OR	96,260
Lincoln County Council on Alcohol & Drug Abuse, Inc	OR	43,311
Linn-Benton Housing Authority	OR	66,578
Mid-Columbia Community Action Council Inc	OR	11,605
Mid-Columbia Community Action Council Inc	OR	58,248
Mid-Willamette Valley Community Action Agency	OR	83,572
Mid-Willamette Valley Community Action Agency	OR	30,394
Mid-Willamette Valley Community Action Agency	OR	306,901
Neighborhood House	OR	276,770
NeighborImpact	OR	302,996
Northwest Human Services, Inc	OR	67,268
Northwest Human Services, Inc	OR	235,025
Northwest Pilot Project, Inc	OR	122,879
Open Door Counseling Center	OR	38,095
Oregon Coast Community Action	OR	14,910
Oregon Coast Community Action	OR	97,387
Oregon Coast Community Action	OR	22,025
Oregon Coast Community Action	OR	26,463
Oregon Coast Community Action	OR	14,314
Oregon Coast Community Action	OR	82,535
Oregon Housing and Community Services	OR	32,081
Oregon Human Development Corporation	OR	41,820
Oregon State Department of Human Services	OR	17,496
Oregon State Department of Human Services	OR	82,006
Oregon State Department of Human Services	OR	24,645
Portland Impact, Inc	OR	115,737
Rogue Valley Council of Governments	OR	136,957
Shangri-La Corporation	OR	37,800
Shangri-La Corporation	OR	153,860
St. Vincent de Paul Society of Lane County, Inc	OR	249,736
St. Vincent de Paul Society of Lane County, Inc	OR	88,470
St. Vincent de Paul Society of Lane County, Inc	OR	56,904
St. Vincent de Paul Society of Lane County, Inc	OR	222,219
The Inn-Home for Boys	OR	33,870
The Inn-Home for Boys	OR	244,192
The Salvation Army	OR	39,375
The Salvation Army, A California Corp	OR	50,000
The Salvation Army, A California Corporation	OR	125,769
The Salvation Army, A California Corporation	OR	539,104

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Tillamook Co. Community Action Resource Enterprises, Inc	OR	25,061
Tillamook Co. Community Action Resource Enterprises, Inc	OR	112,175
Transition Projects, Inc	OR	277,367
Transition Projects, Inc	OR	116,302
Transition Projects, Inc	OR	243,041
United Community Action Network	OR	42,525
United Community Action Network	OR	35,555
United Community Action Network	OR	59,368
United Community Action Network	OR	80,425
Washington County Department of Housing Services	OR	119,465
Washington County Department of Housing Services	OR	136,523
Washington County Department of Housing Services	OR	83,868
Washington County Department of Housing Services	OR	291,867
Washington County Department of Housing Services	OR	39,000
Washington County Department of Housing Services	OR	31,027
Washington County Department of Housing Services	OR	134,460
Washington County Department of Housing Services	OR	1,074,780
Washington County Department of Housing Services	OR	14,496
Yamhill Community Action Partnerships	OR	41,046
1260 Housing Development Corporation	PA	144,900
1260 Housing Development Corporation	PA	201,685
1260 Housing Development Corporation	PA	528,524
1260 Housing Development Corporation	PA	260,604
1260 Housing Development Corporation	PA	67,686
AchieveAbility	PA	161,700
AchieveAbility	PA	42,000
AchieveAbility	PA	210,000
ActionAIDS, Inc	PA	249,417
ActionAIDS, Inc	PA	178,750
Adams County Housing Authority	PA	39,745
AIDS Care Group	PA	361,877
Allegheny County Department of Human Services	PA	838,500
Allegheny County Department of Human Services	PA	350,870
Allegheny County Department of Human Services	PA	64,890
Allegheny County Department of Human Services	PA	606,630
Allegheny County Department of Human Services	PA	177,471
Allegheny County Department of Human Services	PA	242,611
Allegheny County Department of Human Services	PA	99,378
Allegheny County Department of Human Services	PA	55,282
Allegheny County Department of Human Services	PA	105,875
Allegheny County Department of Human Services	PA	27,384
Allegheny County Department of Human Services	PA	91,862
Allegheny County Department of Human Services	PA	106,050
Allegheny County Department of Human Services	PA	68,404
Allegheny County Department of Human Services	PA	251,514
Allegheny County Department of Human Services	PA	173,157
Allegheny County Department of Human Services	PA	120,750
Allegheny County Department of Human Services	PA	107,841
Allegheny County Department of Human Services	PA	193,696
Allegheny County Department of Human Services	PA	737,100
Allegheny County Department of Human Services	PA	195,223
Allegheny County Department of Human Services	PA	215,526
Allegheny County Department of Human Services	PA	362,820
Allegheny County Department of Human Services	PA	868,329
Allegheny County Department of Human Services	PA	87,995
Allegheny County Department of Human Services	PA	251,286
Allegheny County Department of Human Services	PA	39,454
Allegheny County Department of Human Services	PA	386,977
Allegheny County Department of Human Services	PA	259,638
Allegheny County Department of Human Services	PA	73,143
Allegheny County Department of Human Services	PA	55,556
Allegheny County Department of Human Services	PA	68,355
Allegheny County Department of Human Services	PA	174,237
Allegheny County Department of Human Services	PA	2,184,420
Allegheny County Department of Human Services	PA	190,890
Allegheny County Department of Human Services	PA	152,566
Allegheny County Department of Human Services	PA	2,304,000
Allegheny County Department of Human Services	PA	224,833
Allegheny County Department of Human Services	PA	133,992
Allegheny County Department of Human Services	PA	109,440
Allegheny County Department of Human Services	PA	393,828
American Red Cross, The	PA	80,905

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
American Rescue Workers Inc	PA	116,793
Armstrong County Community Action Agency	PA	126,728
Armstrong County Community Action Agency	PA	121,082
Asociacion Puertoriquenos en Marcha, Inc	PA	129,778
Asociacion Puertoriquenos en Marcha, Inc	PA	149,711
Berks Counseling Center, Inc	PA	170,019
Berks Counseling Center, Inc	PA	79,135
Berks Counseling Center, Inc	PA	39,660
Berks Counseling Center, Inc	PA	133,745
Berks Counseling Center, Inc	PA	99,960
Berks Counseling Center, Inc	PA	70,570
Berks County Women in Crises	PA	28,000
Bethesda Project	PA	223,761
Bethesda Project	PA	160,900
Blair County Community Action Program	PA	357,374
Blair County Community Action Program	PA	104,630
Brethren Housing Association	PA	132,199
Bucks County Housing Group, Inc	PA	160,407
Calcutta House	PA	75,455
Calcutta House	PA	115,943
Cameron and Elk Counties MH/MR Program	PA	67,732
CAPSEA, Inc	PA	93,581
Carson Valley Children's Aid	PA	353,396
Catherine McAuley Center	PA	113,700
Catherine McAuley Center	PA	138,399
CATHOLIC CHARITIES OF THE DIOCESE OF ALLENTOWN, INC	PA	212,175
Catholic Social Services	PA	87,780
Catholic Social Services	PA	120,749
Catholic Social Services	PA	60,245
Catholic Social Services	PA	102,229
Catholic Social Services	PA	88,200
Catholic Social Services	PA	202,085
Catholic Social Services of the Diocese of Scranton, Inc	PA	212,700
Catholic Social Services of the Diocese of Scranton, Inc	PA	375,502
Catholic Social Services of the Diocese of Scranton, Inc	PA	125,924
Catholic Social Services of the Diocese of Scranton, Inc	PA	210,118
Catholic Social Services of the Diocese of Scranton, Inc	PA	125,401
Catholic Social Services of the Diocese of Scranton, Inc	PA	141,825
Catholic Social Services of the Diocese of Scranton, Inc	PA	39,871
Catholic Youth Center	PA	318,101
Centre County Youth Service Bureau	PA	52,870
Changing The World, Inc	PA	198,502
Chester County	PA	83,868
Chester County	PA	17,304
Chester County	PA	100,000
Chester County	PA	133,020
Chester County	PA	56,832
Chester County	PA	112,907
Chester County	PA	105,000
Chester County	PA	305,640
Chester County	PA	106,560
Christian Churches United	PA	311,280
City Mission-Living Stones, Inc	PA	133,417
City Mission-Living Stones, Inc	PA	108,581
City of Philadelphia	PA	116,496
City of Philadelphia	PA	73,799
City of Philadelphia	PA	873,612
City of Philadelphia	PA	147,924
City of Philadelphia	PA	430,920
City of Philadelphia	PA	106,560
City of Philadelphia	PA	221,550
City of Philadelphia	PA	14,208
City of Philadelphia	PA	129,384
City of Philadelphia	PA	449,736
City of Philadelphia	PA	315,094
City of Philadelphia	PA	182,448
City of Philadelphia	PA	313,416
City of Philadelphia	PA	63,936
City of Philadelphia	PA	317,340
City of Philadelphia	PA	1,183,500
City of Philadelphia	PA	955,404
City of Philadelphia	PA	167,088

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
City of Philadelphia	PA	85,248
City of Philadelphia	PA	71,040
City of Philadelphia	PA	381,001
City of Philadelphia	PA	432,000
City of Philadelphia	PA	99,272
City of Philadelphia	PA	381,144
City of Philadelphia	PA	707,544
City of Philadelphia	PA	133,476
City of Philadelphia	PA	296,172
City of Philadelphia	PA	28,416
City of Philadelphia	PA	378,000
City of Philadelphia	PA	108,000
City of Philadelphia	PA	812,340
City of Philadelphia	PA	108,000
Clearfield-Jefferson MH/MR Program	PA	88,237
COMHAR	PA	285,805
COMHAR	PA	509,646
Commission on Economic Opportunity	PA	187,682
Commission on Economic Opportunity	PA	203,236
Commission on Economic Opportunity	PA	110,224
Commission on Economic Opportunity	PA	179,869
Commission on Economic Opportunity	PA	171,124
Commission on Economic Opportunity	PA	164,485
Commission on Economic Opportunity	PA	80,255
Commission on Economic Opportunity	PA	260,818
Committee For Dignity and Fairness For the Homeless Housing	PA	122,253
Committee For Dignity and Fairness For the Homeless Housing	PA	30,569
Committee For Dignity and Fairness For the Homeless Housing	PA	212,306
Commonwealth of Pennsylvania	PA	234,949
Community Action Agency of Delaware County, Inc	PA	438,961
Community Action Agency of Delaware County, Inc	PA	340,865
Community Action Committee of the Lehigh Valley	PA	69,999
Community Action Partnership of mercer County	PA	51,498
Community Action Partnership of mercer County	PA	60,257
Community Action Program Of Lancaster County	PA	80,905
Community Action Southwest	PA	36,228
Community Action, Inc	PA	67,165
Community Action, Inc	PA	86,567
Community Alliance and Reinvestment Endeavor, Inc	PA	37,262
Community Basics, Inc	PA	175,879
Community Basics, Inc	PA	116,443
Community Housing Services	PA	92,209
Community Housing Services	PA	116,539
Community Housing Services	PA	113,761
Community Housing Services	PA	44,982
Community Services of Venango County, Inc	PA	54,268
Community, Youth and Women's Alliance, Inc	PA	44,593
Connect, Inc	PA	259,346
Connect, Inc	PA	121,579
Council on Chemical Abuse	PA	106,824
Council on Chemical Abuse	PA	54,602
Council on Chemical Abuse	PA	82,869
County of Bucks	PA	108,796
County of Bucks	PA	108,000
County of Butler	PA	83,975
County of Butler	PA	165,376
County of Butler	PA	329,798
County of Delaware	PA	125,604
County of Delaware	PA	205,800
County of Erie	PA	492,319
County of Erie	PA	142,044
County of Erie	PA	210,180
County of Erie	PA	360,600
County of Erie	PA	136,368
County of Erie	PA	254,457
County of Erie	PA	177,297
County of Erie	PA	341,712
County of Franklin	PA	94,588
County of Greene	PA	134,315
County of Greene	PA	86,751
County of Lancaster	PA	556,762
County of Venango	PA	177,120

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
County of Washington	PA	65,415
County of Washington	PA	61,765
County of Washington	PA	225,654
County of Washington	PA	70,875
County of Washington	PA	170,880
County of Washington	PA	141,147
County of Washington	PA	93,816
County of Washington	PA	202,210
County of Washington	PA	165,950
County of Washington	PA	145,812
County of York	PA	122,062
Crawford County Coalition on Housing Needs, Inc	PA	40,759
Crawford County Commissioners	PA	161,616
Crawford County Mental Health Awareness Program, Inc	PA	91,783
Crawford County Mental Health Awareness Program, Inc	PA	121,800
Crisis Shelter of Lawrence County	PA	83,121
Dedicated HMIS Project	PA	136,639
Delaware County Housing Authority	PA	159,660
Delaware County Housing Authority	PA	137,485
Delaware County Housing Authority	PA	149,652
Delaware County Housing Authority	PA	450,588
Delaware County Housing Authority	PA	131,220
Delaware County Housing Authority	PA	212,724
Delaware County Housing Authority	PA	136,133
Domestic Abuse Project of Delaware County, Inc	PA	150,903
Domestic Violence Center of Chester County	PA	89,302
Domestic Violence Intervention of Lebanon County, Inc	PA	290,090
Domestic Violence Service Center, Inc	PA	57,015
Drueding Center	PA	1,081,414
DUBOIS HOUSING AUTHORITY	PA	347,388
Easy Does It, Inc	PA	338,270
Easy Does It, Inc	PA	65,333
Easy Does It, Inc	PA	31,040
EMDB d/b/a New Bethany Ministries	PA	114,853
Episcopal Community Services	PA	647,203
Family and Community Service of Delaware County	PA	108,069
Family Planning Council, Inc	PA	127,661
Family Services of Montgomery County	PA	188,614
Family Services of Montgomery County	PA	245,355
Fayette County Community Action Agency, Inc	PA	65,695
Fayette County Community Action Agency, Inc	PA	62,982
Fitzmaurice Community Services, Inc	PA	130,807
Fitzmaurice Community Services, Inc	PA	143,000
Futures Community Support Services	PA	35,882
Gaudenzia Inc	PA	233,175
Gaudenzia Inc	PA	65,953
Gaudenzia Inc	PA	138,601
Harbor Point Housing, Inc	PA	82,564
Hedwig House, Inc	PA	186,490
HELP Development Corporation	PA	487,622
Holcomb Associates, Inc	PA	116,999
Home Nursing Agency Community Services	PA	210,216
Horizon House	PA	226,223
Horizon House	PA	351,217
Horizon House	PA	347,215
Horizon House	PA	404,384
Horizon House	PA	801,713
Horizon House	PA	228,199
Horizon House	PA	644,582
Horizon House	PA	96,201
Housing Authority of Centre County	PA	69,024
Housing Authority of Monroe County	PA	170,760
Housing Authority of the City of Lancaster	PA	240,840
Housing Authority of the City of Lancaster	PA	141,216
Housing Authority of the County of Beaver	PA	37,879
Housing Authority of the County of Butler Inc	PA	52,447
Housing Authority of the County of Butler Inc	PA	141,750
Housing Authority of the County of Butler Inc	PA	62,651
Housing Authority of the County of Cumberland	PA	302,245
Housing Authority of the County of Cumberland	PA	63,555
Housing Authority of the County of Cumberland	PA	229,995
Housing Authority of the County of Cumberland	PA	395,280

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Housing Authority of the County of Dauphin	PA	242,124
Housing Authority of the County of Lebanon	PA	117,470
Housing Development Corporation of NEPA	PA	181,642
Housing Development Corporation of NEPA	PA	169,223
Housing Development Corporation of NEPA	PA	136,087
Housing Development Corporation of NEPA	PA	99,128
Housing Development Corporation of NEPA	PA	221,543
Human Services Center	PA	60,195
Impact Services Corporation	PA	624,728
Impact Services Corporation	PA	268,304
Indiana County Community Action Program, Inc	PA	31,896
Indiana County Community Action Program, Inc	PA	82,842
Indiana County Community Action Program, Inc	PA	13,393
Interfaith Housing Development Corporation of Bucks County	PA	344,844
Keystone Opportunity Center, Inc	PA	29,410
Keystone Opportunity Center, Inc	PA	44,989
Lawrence County Social Services, Inc	PA	88,928
Lawrence County Social Services, Inc	PA	76,650
Lawrence County Social Services, Inc	PA	42,593
Lawrence County Social Services, Inc	PA	126,936
Lebanon County Community Action Partnership	PA	26,234
Lehigh County Conference of Churches	PA	203,542
Lehigh County Conference of Churches	PA	168,716
Lehigh County Housing Authority	PA	207,648
Luzerne Intermediate Unit #18	PA	63,210
Lyc-Clint Counties Comm for Community Action (STEP), Inc	PA	184,010
MARANATHA	PA	105,138
MARANATHA	PA	261,796
Mechling-Shakley Veterans Center	PA	28,551
Mental Health Association of Southeastern Pennsylvania	PA	174,351
Mental Health Association of Southeastern Pennsylvania	PA	140,034
Mental Health Association of Southeastern Pennsylvania	PA	186,634
MERCER COUNTY HOUSING AUTHORITY	PA	80,724
Methodist Family Services of Philadelphia	PA	250,354
Methodist Family Services of Philadelphia	PA	181,227
MidPenn Legal Services	PA	39,999
Montgomery County Community Action Development Commission (C	PA	59,216
Montgomery County, PA, BH/DD	PA	271,341
Montgomery County, PA, BH/DD	PA	196,791
Neighborhood Services of Lancaster, inc	PA	42,880
NHS Human Services of PA	PA	67,543
Northampton County Housing Authority	PA	100,440
Northern Cambria Community Development Corporation	PA	51,209
Northern Cambria Community Development Corporation	PA	63,414
Northern Cambria Community Development Corporation	PA	69,232
Northern Cambria Community Development Corporation	PA	131,843
Northumberland County MH/MR	PA	78,131
Opportunity House	PA	102,504
Opportunity House	PA	84,000
Opportunity House	PA	58,997
Opportunity House	PA	42,827
Opportunity House	PA	30,654
Overington House, Inc	PA	225,959
Pathways to Housing Inc	PA	1,098,000
Penn Foundation, Inc	PA	66,272
Penndel Mental Health Center, Inc	PA	83,239
Penndel Mental Health Center, Inc	PA	72,904
People's Emergency Center	PA	369,810
People's Emergency Center	PA	98,188
People's Emergency Center	PA	496,362
People's Emergency Center	PA	34,815
People's Emergency Center	PA	78,995
People's Emergency Center	PA	103,670
People's Emergency Center	PA	53,384
People's Emergency Center	PA	241,083
Philadelphia Housing Authority	PA	71,040
Philadelphia Housing Authority	PA	42,624
Prince of Peace Center	PA	103,612
Project HOME	PA	124,922
Project HOME	PA	773,964
Redevelopment Authority of the County of Lancaster	PA	68,977
Redevelopment Authority of the County of Lancaster	PA	50,307

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Resources for Human Development, Inc	PA	486,335
Resources for Human Development, Inc	PA	166,378
Resources for Human Development, Inc	PA	257,887
Resources for Human Development, Inc	PA	326,308
Resources for Human Development, Inc	PA	225,435
Schuylkill Women in Crisis	PA	52,810
Schuylkill Women in Crisis	PA	33,328
Scranton Primary Health Care Center, Inc	PA	55,125
St. Joseph's Center	PA	107,075
Supportive Services, Inc	PA	164,430
Supportive Services, Inc	PA	175,561
Supportive Services, Inc	PA	391,422
Tabor Community Services Inc	PA	115,972
Tabor Community Services Inc	PA	43,157
Tabor Community Services Inc	PA	85,116
The Community Intervention Center of Lackawanna County	PA	137,733
The Lighthouse Foundation	PA	39,274
The Lodge, Inc. of Pennsylvania	PA	161,860
The Philadelphia Veterans Multi-Service & Education Center	PA	301,698
THE PROGRAM for Women and Families, Inc	PA	110,408
The Salvation Army	PA	70,024
The Salvation Army	PA	159,570
The Salvation Army	PA	183,193
The Salvation Army	PA	60,375
The Salvation Army	PA	207,199
The Salvation Army	PA	286,812
The Salvation Army	PA	86,135
The Salvation Army	PA	99,806
The Salvation Army	PA	203,440
The Salvation Army	PA	181,941
The Salvation Army	PA	278,869
The Salvation Army	PA	95,485
Tioga Co. Housing Authority	PA	67,860
Travelers Aid Society of Philadelphia	PA	359,951
Travelers Aid Society of Philadelphia	PA	131,428
Travelers Aid Society of Philadelphia	PA	255,735
Turning Point Interfaith Mission	PA	204,155
Turning Point Interfaith Mission	PA	113,111
Turning Point Interfaith Mission	PA	140,919
Union Mission of Latrobe, Inc	PA	202,337
United Christian Ministries, Inc	PA	87,959
United Christian Ministries, Inc	PA	90,403
United Neighborhood Centers of Northeastern Pennsylvania	PA	169,913
United Neighborhood Centers of Northeastern Pennsylvania	PA	59,556
United Neighborhood Centers of Northeastern Pennsylvania	PA	213,919
United Neighborhood Centers of Northeastern Pennsylvania	PA	135,954
United Neighborhood Centers of Northeastern Pennsylvania	PA	136,437
Valley Housing Development Corporation	PA	120,626
Valley Housing Development Corporation	PA	215,964
Valley Housing Development Corporation	PA	131,770
Valley Youth House Committee, Inc	PA	468,880
Valley Youth House Committee, Inc	PA	236,273
Valley Youth House Committee, Inc	PA	497,322
Victim Outreach Intervention Center	PA	87,178
Victim Outreach Intervention Center	PA	300,835
Volunteers of America	PA	291,572
Volunteers Of America Delaware Valley Inc	PA	114,744
W.C. Atkinson Memorial Community Service Center, Inc	PA	15,927
Warren-Forest EOC	PA	61,675
Waynesboro New Hope Shelter INC	PA	521,940
Wesley House Community Corporation, Inc	PA	26,199
Westmoreland Community Action	PA	466,388
Westmoreland Community Action	PA	40,950
Women Against Abuse, Inc	PA	181,225
Women's Community Revitalization Project	PA	288,230
Women's Resource Center, Inc	PA	133,423
YMCA of Reading & Berks County	PA	98,568
YMCA of York and York County	PA	88,987
Young Women's Christian Association	PA	396,601
Young Women's Christian Association of York	PA	148,050
YWCA OF GREATER HARRISBURG	PA	259,312
YWCA OF GREATER HARRISBURG	PA	100,000

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
YWCA OF GREATER HARRISBURG	PA	78,071
YWCA OF GREATER HARRISBURG	PA	58,729
YWCA OF GREATER HARRISBURG	PA	96,199
Albergue El Paraiso, Corp	PR	283,970
CASA PROTEGIDA JULIA DE BURGOS, INC	PR	405,460
Centro de Ayuda al Menesteroso, Inc	PR	379,956
Centro Deambulantes Cristo Pobre, Inc.,	PR	188,188
Centro Deambulantes Cristo Pobre, Inc.,	PR	1,437,855
Coalicion de Apoyo Continuo a Personas sin Hogar en San Juan	PR	516,705
Coalicion de Coaliciones Pro Personas Sin Hogar de PR, Inc	PR	780,625
Coalicion de Coaliciones Pro Personas Sin Hogar de PR, Inc	PR	2,061,050
Coalition Of Guaynabo	PR	202,491
CORDA DE PR, INC	PR	483,546
Corp. La Fondita de Jesus	PR	657,039
Corp. La Fondita de Jesus	PR	463,000
Corporacion Milagros del Amor	PR	201,122
COSSMA, INC	PR	148,137
Estancia Corazon, Inc	PR	99,855
Estancia Corazon, Inc	PR	197,803
Estancia Corazon, Inc	PR	288,179
Estancia Corazon, Inc	PR	232,745
Fundacion de Desarrollo Comunal de P.R., Inc "FUNDESCO"	PR	154,795
Fundacion de Desarrollo Comunal de P.R., Inc "FUNDESCO"	PR	135,477
Fundacion de Desarrollo Comunal de P.R., Inc "FUNDESCO"	PR	221,244
Hogar del Buen Pastor, Inc	PR	237,609
Hogar Luz de Vida, Inc	PR	784,650
HOGAR NUEVA MUJER SANTA MARIA DE LA MERCED, INC	PR	688,548
Hogar Resurreccion,Inc	PR	207,650
INSTITUTO PRE-VOCACIONAL E INDUSTRIAL DE PUERTO RICO, INC	PR	149,964
La Perla de Gran Precio	PR	118,738
La Perla de Gran Precio	PR	145,637
La Tierra Prometida, Inc	PR	267,578
Lucha Contra el SIDA, Inc	PR	882,000
Lucha Contra el SIDA, Inc	PR	77,086
Lucha Contra el SIDA, Inc	PR	575,880
Lucha Contra el SIDA, Inc	PR	180,963
Mental Health & Anti-Addiction Services Adm.	PR	1,978,515
Municipality Autonomous of Ponce	PR	726,000
Municipality of Carolina	PR	308,569
Municipality of Cayey	PR	220,320
Municipality of Mayagüez	PR	611,520
Municipality of Naranjito	PR	423,396
Municipality of Naranjito	PR	88,816
Municipality of San Juan-Family & Community Department	PR	330,939
Municipality of San Juan-Family & Community Department	PR	282,043
Municipality of San Juan-Family & Community Department	PR	974,700
Municipality of San Juan-Family & Community Department	PR	300,354
Municipality of San Juan-Family & Community Department	PR	314,286
Municipality of San Juan-Family & Community Department	PR	298,510
Municipality of San Juan-Family & Community Department	PR	477,084
Municipality of Toa Baja	PR	430,532
Municipality of Vega Alta	PR	425,560
Municipality of Vega Baja	PR	240,219
Municipality of Vega Baja	PR	153,417
Municipality of Yauco	PR	157,920
Municipality of Yauco	PR	1,029,150
Municipio Autonomo de Guayama	PR	460,800
Municipio de Humacao	PR	389,100
Programa Guara Bi, Inc	PR	597,450
Programa Guara Bi, Inc	PR	594,112
Family Resources Community Action	RI	32,428
Newport County Community Mental Health Center	RI	8,204
Rhode Island Housing and Mortgage Finance Corporation	RI	90,029
Rhode Island Housing and Mortgage Finance Corporation	RI	117,959
Rhode Island Housing and Mortgage Finance Corporation	RI	45,299
Rhode Island Housing and Mortgage Finance Corporation	RI	82,625
Rhode Island Housing and Mortgage Finance Corporation	RI	95,250
Rhode Island Housing and Mortgage Finance Corporation	RI	78,000
Rhode Island Housing and Mortgage Finance Corporation	RI	166,666
Rhode Island Housing and Mortgage Finance Corporation	RI	26,517
Rhode Island Housing and Mortgage Finance Corporation	RI	71,332
Rhode Island Housing and Mortgage Finance Corporation	RI	17,864

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Rhode Island Housing and Mortgage Finance Corporation	RI	232,131
Rhode Island Housing and Mortgage Finance Corporation	RI	125,517
Rhode Island Housing and Mortgage Finance Corporation	RI	120,220
Rhode Island Housing and Mortgage Finance Corporation	RI	26,705
Rhode Island Housing and Mortgage Finance Corporation	RI	88,334
Rhode Island Housing and Mortgage Finance Corporation	RI	178,087
Rhode Island Housing and Mortgage Finance Corporation	RI	107,716
Rhode Island Housing and Mortgage Finance Corporation	RI	22,880
Rhode Island Housing and Mortgage Finance Corporation	RI	57,424
Rhode Island Housing and Mortgage Finance Corporation	RI	161,879
Rhode Island Housing and Mortgage Finance Corporation	RI	32,800
Rhode Island Housing and Mortgage Finance Corporation	RI	67,916
Rhode Island Housing and Mortgage Finance Corporation	RI	32,456
Rhode Island Housing and Mortgage Finance Corporation	RI	30,924
Rhode Island Housing and Mortgage Finance Corporation	RI	47,482
Rhode Island Housing and Mortgage Finance Corporation	RI	1,169,832
Rhode Island Housing and Mortgage Finance Corporation	RI	23,605
Rhode Island Housing and Mortgage Finance Corporation	RI	253,752
Rhode Island Housing and Mortgage Finance Corporation	RI	64,692
Rhode Island Housing and Mortgage Finance Corporation	RI	60,897
Rhode Island Housing and Mortgage Finance Corporation	RI	126,393
Rhode Island Housing and Mortgage Finance Corporation	RI	93,779
Rhode Island Housing and Mortgage Finance Corporation	RI	11,248
Rhode Island Housing and Mortgage Finance Corporation	RI	539,880
Rhode Island Housing and Mortgage Finance Corporation	RI	149,797
Rhode Island Housing and Mortgage Finance Corporation	RI	190,474
Rhode Island Housing and Mortgage Finance Corporation	RI	32,340
Rhode Island Housing and Mortgage Finance Corporation	RI	619,140
Rhode Island Housing and Mortgage Finance Corporation	RI	63,813
Rhode Island Housing and Mortgage Finance Corporation	RI	24,712
Rhode Island Housing and Mortgage Finance Corporation	RI	129,639
Rhode Island Housing and Mortgage Finance Corporation	RI	55,000
The Providence Center	RI	41,133
Washington Square Services Corporation	RI	103,217
Any Length Recovery, Inc	SC	78,746
Any Length Recovery, Inc	SC	80,326
Citizens Opposed to Domestic Abuse	SC	176,937
City of Charleston	SC	283,500
Community Development Corporation of Marlboro County	SC	69,698
Crisis Ministries	SC	71,598
Crisis Ministries	SC	45,765
Crisis Ministries	SC	101,136
Crisis Ministries	SC	73,336
Crisis Ministries	SC	67,741
Crisis Ministries	SC	77,752
Eastern Carolina Homelessness Organization	SC	126,360
Eastern Carolina Homelessness Organization	SC	122,550
Family Services Inc	SC	199,206
Family Services Inc	SC	143,072
Florence Crittenton Programs of South Carolina	SC	49,946
Greenville Area Interfaith Hospitality Network	SC	21,775
Growing Home Southeast, Inc	SC	26,250
Healing Properties, Inc	SC	36,750
Healing Properties, Inc	SC	68,645
Home Alliance, Inc	SC	23,332
Home Alliance, Inc	SC	98,650
Home Alliance, Inc	SC	68,606
Home Alliance, Inc	SC	128,000
Homes of Hope, Inc	SC	55,866
MEG's House Shelter for Abused Women and Children	SC	223,358
MEG's House Shelter for Abused Women and Children	SC	160,089
MEG's House Shelter for Abused Women and Children	SC	159,563
Mental Illness Recovery Center, Inc	SC	429,641
Myrtle Beach Housing Authority	SC	219,396
New Promise Permanent Housing Program	SC	75,913
Our Daily Rest	SC	315,000
Pee Dee Community Action Agency	SC	179,098
Pee Dee Community Action Partnership	SC	46,552
Project Care, Inc	SC	166,667
Project Care, Inc	SC	160,566
Richland County	SC	80,544
Sistercare Inc	SC	77,664

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Sistercare Inc	SC	110,380
Sistercare Inc	SC	91,366
South Carolina Department of Mental Health	SC	124,764
South Carolina Department of Mental Health	SC	113,760
South Carolina Department of Mental Health	SC	193,716
South Carolina Department of Mental Health	SC	280,308
South Carolina Department of Mental Health	SC	219,708
Sunbelt Human Advancement Resources, Inc. (SHARE)	SC	721,300
The ACCESS Network, Inc	SC	52,090
The ACCESS Network, Inc	SC	100,076
The Housing Authority of the City of Columbia, SC	SC	144,825
The Housing Authority of the City of Columbia, SC	SC	208,477
The Housing Authority of the City of Columbia, SC	SC	68,996
The Samaritan House of Orangeburg, Inc	SC	101,812
Trinity Housing Corporation	SC	80,316
United Way of Kershaw County	SC	83,100
Upstate Homeless Coalition of South Carolina	SC	110,000
Upstate Homeless Coalition of South Carolina	SC	158,818
Upstate Homeless Coalition of South Carolina	SC	133,875
Upstate Homeless Coalition of South Carolina	SC	160,163
Upstate Homeless Coalition of South Carolina	SC	184,305
Upstate Homeless Coalition of South Carolina	SC	642,151
Williamsburg Enterprise Community Commission, Inc	SC	128,041
cornerstone rescue mission	SD	73,704
Inter-Lakes Community Action Partnership	SD	319,373
Lewis & Clark Behavioral Health Services, Inc	SD	126,978
Pennington County Housing and Redevelopment Commission	SD	459,060
Pennington County Housing and Redevelopment Commission	SD	183,108
Sioux Falls Housing and Redevelopment Commission	SD	130,320
Sioux Falls Housing and Redevelopment Commission	SD	288,516
South Dakota Housing Development Authority	SD	40,443
AGAPE Child & Family Services, Inc	TN	193,040
AGAPE Child & Family Services, Inc	TN	245,477
AIM Housing, Inc	TN	154,726
Alpha Omega Veterans Services, Inc	TN	165,900
Alpha Omega Veterans Services, Inc	TN	142,158
Alpha Omega Veterans Services, Inc	TN	106,888
Alpha Omega Veterans Services, Inc	TN	93,424
Appalachian Regional Coalition on Homelessness	TN	102,952
Area Releif Ministries, Inc	TN	20,702
Beech Bluff United Pentecostal Church	TN	72,775
Behavioral Health Initiatives, Inc	TN	78,750
Buffalo Valley, Inc	TN	73,047
Buffalo Valley, Inc	TN	228,444
Buffalo Valley, Inc	TN	445,651
Buffalo Valley, Inc	TN	24,850
Buffalo Valley, Inc	TN	72,836
Buffalo Valley, Inc	TN	49,575
Buffalo Valley, Inc	TN	444,151
Buffalo Valley, Inc	TN	131,539
Buffalo Valley, Inc	TN	71,375
Campus for Human Development	TN	132,370
Carey Counseling Center, Inc	TN	61,595
Carey Counseling Center, Inc	TN	25,107
Carey Counseling Center, Inc	TN	17,150
Case Management Incorporated	TN	87,173
Case Management Incorporated	TN	13,537
Catholic Charities of East Tennessee	TN	135,899
Catholic Charities of East Tennessee, Inc	TN	116,698
Catholic Charities of East Tennessee, Inc	TN	84,180
Catholic Charities, Inc	TN	490,963
Catholic Charities, Inc	TN	454,894
Catholic Charities, Inc	TN	296,565
Chattanooga Church Ministries Inc	TN	90,873
Chattanooga Church Ministries Inc	TN	94,827
Chattanooga Church Ministries Inc	TN	105,874
Chattanooga Homeless Coalition	TN	34,240
Chattanooga Homeless Coalition	TN	100,558
Chattanooga Housing Authority	TN	322,080
Chattanooga Housing Authority	TN	81,528
Chattanooga Housing Authority	TN	36,600
Child & Family Tennessee	TN	268,697

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
City of Chattanooga	TN	201,936
City of Clarksville	TN	128,880
City of Memphis, Tennessee	TN	131,856
City of Memphis, Tennessee	TN	318,240
City of Memphis, Tennessee	TN	196,416
Cocaine & Alcohol Awareness Program, Inc	TN	168,748
Community Alliance for the Homeless	TN	46,514
Community Alliance for the Homeless	TN	100,170
Community Alliance for the Homeless	TN	37,572
Cumberland Regional Development Corporation	TN	57,580
Cumberland Regional Development Corporation	TN	88,338
Damascus Road, Inc	TN	36,426
Damascus Road, Inc	TN	49,257
Damascus Road, Inc	TN	65,352
Domestic Violence Program Inc	TN	30,766
Door of Hope, Inc	TN	435,294
Door of Hope, Inc	TN	158,237
Fairview Housing Management Corporation	TN	123,499
Fayette Cares, Inc	TN	38,369
Fortwood Center, Inc	TN	138,649
Frayser Millington North Shelby Mental Health Center, Inc	TN	217,500
Genesis House, Inc	TN	64,161
Greenhouse Ministries	TN	39,183
Greenhouse Ministries	TN	25,061
Helen Ross McNabb Center	TN	61,209
Henry County, Tennessee	TN	187,764
Hope House Maury County Center Against Domestic Violence	TN	74,212
Housing Opportunities and People Enterprises, Inc	TN	78,357
Housing Opportunities and People Enterprises, Inc	TN	19,202
Interfaith Hospitality Network of Greater Johnson City	TN	81,608
Interfaith Hospitality Network of Greater Kingsport	TN	83,166
Jackson Area Council on Alcoholism and Drug Dependency	TN	63,408
Jackson Housing Authority	TN	118,464
Kingsport Housing & Redevelopment Authority	TN	42,732
Kingsport Housing & Redevelopment Authority	TN	41,613
Kingsport Housing & Redevelopment Authority	TN	41,004
Kingsport Housing & Redevelopment Authority	TN	57,000
Kingsport Housing & Redevelopment Authority	TN	179,436
Kingsport Housing & Redevelopment Authority	TN	65,761
Kingsport Housing & Redevelopment Authority	TN	279,420
Knoxville-Knox County Community Action Committee	TN	139,050
Knoxville-Knox County Community Action Committee	TN	90,096
Knoxville-Knox County Community Action Committee	TN	104,580
Legal Aid of East Tennessee, Inc	TN	17,713
Life Center Foundation, Inc	TN	129,822
Matthew 25, Inc	TN	37,041
Memphis Family Shelter	TN	197,886
Metropolitan Development & Housing Agency	TN	58,161
Metropolitan Development & Housing Agency	TN	60,144
Metropolitan Development & Housing Agency	TN	1,721,352
Metropolitan Development & Housing Agency	TN	45,504
Metropolitan Development & Housing Agency	TN	103,440
Metropolitan Inter-Faith Association	TN	145,621
Metropolitan Inter-Faith Association	TN	497,674
Murfreesboro Housing Authority	TN	70,020
Murfreesboro Housing Authority	TN	295,980
Murfreesboro Housing Authority	TN	15,718
Operation Stand Down Nashville, Inc	TN	50,000
Park Center	TN	124,080
Partnership for Families, Children and Adults	TN	27,978
Peace Unlimited in Recovery	TN	51,861
Positively Living	TN	70,204
Professional Care Services Of West Tn., Inc	TN	9,000
Quinco Community Mental Health Center, Inc	TN	68,595
Renewal House, Inc	TN	60,443
Safe Haven Family Shelter	TN	75,728
Safe Haven Family Shelter	TN	56,910
Shelby County Government	TN	228,782
Southeast Tennessee Human Resource Agency	TN	240,504
Southeast Tennessee Human Resource Agency	TN	549,435
T.A.M.B. of Jackson, Inc	TN	39,549
Tennessee Homeless Solutions	TN	55,956

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Tennessee Homeless Solutions	TN	45,017
Tennessee Homeless Solutions	TN	111,185
Tennessee Valley Coalition to End Homelessness, Inc	TN	71,384
The Council for Alcohol and Drug Abuse Services, Inc	TN	211,254
The Journey Home	TN	35,361
The Journey Home	TN	48,301
The Mary Parrish Center	TN	34,330
The Next Door, Inc	TN	117,400
The Salvation Army, a Georgia Corporation	TN	385,192
The Salvation Army, A Georgia Corporation	TN	207,648
The Salvation Army, a Georgia Corporation	TN	70,099
The Salvation Army, a Georgia Corporation	TN	229,565
The University of Tennessee	TN	132,282
Town of Crossville Housing Authority	TN	30,564
Town of Crossville Housing Authority	TN	71,400
Town of Crossville Housing Authority	TN	160,643
Town of Crossville Housing Authority	TN	72,744
Town of Crossville Housing Authority	TN	105,853
Urban Housing Solutions	TN	168,705
Urban Housing Solutions	TN	119,000
Urban Housing Solutions	TN	255,300
Urban Housing Solutions	TN	61,125
Volunteer Ministry Center	TN	50,000
Welcome Home Ministries, Inc	TN	47,981
Wo/Men's Resource and Rape Assistance Program	TN	72,976
YWCA of Nashville and Middle Tennessee	TN	173,769
ACH Child and Family Services	TX	113,922
AIDS Foundation Houston, Inc	TX	409,192
AIDS Foundation Houston, Inc	TX	963,357
AIDS Foundation Houston, Inc	TX	613,230
AIDS Foundation Houston, Inc	TX	396,314
Alternative Building Concepts Group	TX	56,883
Alternative Building Concepts Group	TX	384,720
Arlington Life Shelter	TX	83,686
Arlington Life Shelter	TX	63,471
Austin Travis County Mental Health Mental Retardation Center	TX	348,007
Austin Travis County Mental Health Mental Retardation Center	TX	28,893
Austin Travis County Mental Health Mental Retardation Center	TX	78,533
Bay Area Homeless Services Inc	TX	234,005
Bay Area Turning Point, Inc	TX	107,210
Brighter Tomorrows, Inc	TX	176,876
Buckner Children and Family Services, Inc	TX	35,016
Career and Recovery Resources, Inc	TX	117,110
Caritas of Austin	TX	303,712
Caritas of Austin	TX	196,492
Caritas of Austin	TX	401,884
Caritas of Austin	TX	198,885
Catholic Charities Diocese of Fort Worth	TX	333,435
Catholic Charities of the Archdiocese Galveston-Houston	TX	183,655
Catholic Charities of the Archdiocese Galveston-Houston	TX	1,174,633
Center Against Family Violence	TX	82,929
Centro San Vicente	TX	139,998
Change HAPPENS!	TX	337,959
Change HAPPENS!	TX	88,293
Change HAPPENS!	TX	120,750
City of Amarillo	TX	206,564
City of Amarillo	TX	346,452
City of Beaumont	TX	109,680
City of Corpus Christi	TX	128,394
City of Corpus Christi	TX	134,971
City of Corpus Christi	TX	160,255
City of Corpus Christi	TX	122,673
City of Corpus Christi	TX	142,720
City of Corpus Christi	TX	142,569
City of Corpus Christi	TX	181,142
City of Dallas	TX	257,606
City of Dallas	TX	154,027
City of Dallas	TX	384,000
City of Dallas	TX	903,960
City of Dallas	TX	470,880
City of Dallas	TX	88,560
City of Dallas	TX	701,906

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
City of Longview	TX	285,684
City of San Antonio	TX	25,211
City of San Antonio	TX	136,335
City of San Antonio	TX	429,597
City of San Antonio	TX	268,738
City of San Antonio	TX	93,954
City of San Antonio	TX	171,729
City of San Antonio	TX	138,909
City of San Antonio	TX	216,048
City of San Antonio	TX	352,562
City of San Antonio	TX	210,000
City of San Antonio	TX	385,718
City of San Antonio	TX	382,764
City of San Antonio	TX	387,273
City of San Antonio	TX	398,126
City of San Antonio	TX	358,268
City of San Antonio	TX	364,296
City of San Antonio	TX	131,250
City of San Antonio	TX	392,021
City of San Antonio	TX	91,974
City of San Antonio	TX	614,811
City of San Antonio	TX	194,864
City of Texarkana	TX	907,635
City of Waco	TX	63,709
CitySquare	TX	610,110
CitySquare	TX	504,983
CitySquare	TX	185,117
Coalition for the Homeless of Houston/Harris County, Inc	TX	167,709
Coalition for the Homeless of Houston/Harris County, Inc	TX	185,480
Coalition for the Homeless of Houston/Harris County, Inc	TX	603,707
Collin County Mental Health Mental Retardation Center	TX	169,445
Community Enrichment Center, Inc	TX	222,846
Community Partnership for the Homeless DBA Green Doors	TX	65,985
Compassion Ministries of Waco	TX	161,275
Covenant House Texas	TX	394,932
Cross Culture Experiences	TX	181,996
Dental Health Programs, Inc	TX	146,632
Denton County Mental Health Mental Retardation Center	TX	264,318
East Bell County Interfaith Hospitality Network, Family Prom	TX	356,143
El Paso Coalition for the Homeless	TX	107,902
El Paso Human Services, Inc	TX	347,986
El Paso MHMR	TX	176,761
El Paso MHMR	TX	203,982
Family Abuse Center, Inc	TX	268,902
Family Abuse Center, Inc	TX	146,446
Family Gateway, Inc	TX	198,018
Family Gateway, Inc	TX	42,438
Family Gateway, Inc	TX	523,900
Family Gateway, Inc	TX	150,701
Family Services of Southeast Texas, Inc	TX	150,977
Fort Bend County Women's Center, Inc	TX	668,360
Front Steps, Inc	TX	94,668
Harmony House, Inc	TX	133,571
Harmony House, Inc	TX	358,470
Harris County	TX	36,816
Harris County	TX	82,836
Harris County	TX	186,180
Harris County	TX	124,320
Harris County	TX	2,381,340
Harris County	TX	160,656
Harris County	TX	470,184
Harris County	TX	589,548
Harris County	TX	291,576
Harvest Life Foundation	TX	196,407
Health Services of North Texas, Inc	TX	243,812
HELP Development Corporation	TX	439,456
HOPE, Inc	TX	67,333
HOPE, Inc	TX	33,873
Hope's Door Inc	TX	161,710
Hope's Door Inc	TX	69,345
Housing Authority of the City of Arlington	TX	156,168
Housing Authority of the City of Arlington	TX	262,378

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Housing Authority of the City of Austin	TX	179,112
Housing Authority of the City of Austin	TX	361,116
Housing Authority of the City of El Paso	TX	94,140
Housing Authority of the City of Fort Worth	TX	1,623,252
Housing Authority of the City of Fort Worth	TX	1,965,180
Housing Authority of the City of Fort Worth	TX	352,272
Housing Authority of the City of Fort Worth	TX	283,776
Housing Authority of the City of San Antonio	TX	707,664
Housing Crisis Center	TX	532,944
Housing Crisis Center	TX	194,271
Housing Crisis Center	TX	188,196
Housing Crisis Center	TX	106,200
Housing Crisis Center	TX	334,321
Housing Crisis Center	TX	650,000
Houston Area Community Services, Inc	TX	665,647
Houston Area Community Services, Inc	TX	646,747
Houston Area Women's Center	TX	291,402
Houston Area Women's Center	TX	610,858
Houston Area Women's Center	TX	79,194
Interfaith Housing Coalition	TX	348,885
International AIDS Empowerment, Inc	TX	43,898
La Posada Home, Inc	TX	89,026
La Posada Home, Inc	TX	53,544
Legal Aid of NorthWest Texas	TX	142,932
LifeNet Community Behavioral Healthcare	TX	1,318,381
Mental Health and Mental Retardation Authority of Harris Cou	TX	350,446
Mental Health and Mental Retardation of Tarrant County	TX	295,780
Metro Dallas Homeless Alliance	TX	169,395
Metrocare Services	TX	280,240
Metrocare Services	TX	168,588
Metrocare Services	TX	792,229
Metrocare Services	TX	413,004
MHMR of Tarrant County—Addiction Services	TX	67,435
Mid-Coast Family Services, Inc	TX	164,345
Montgomery County Homeless Coalition	TX	47,050
Montgomery County Emergency Assistance, Inc	TX	27,331
Montgomery County Emergency Assistance, Inc	TX	101,753
Montrose Counseling Center, Inc	TX	105,259
Neighborhood Development Corp	TX	148,604
New Beginning Center, Inc	TX	192,928
Northwest Assistance Ministries	TX	501,892
Northwest Assistance Ministries	TX	300,730
Odessa Links, Inc	TX	735,060
Opportunity Center for the Homeless	TX	78,721
Opportunity Center for the Homeless	TX	161,091
Opportunity Center for the Homeless	TX	108,551
Opportunity Center for the Homeless	TX	250,734
Opportunity Center for the Homeless	TX	115,136
Opportunity Center for the Homeless	TX	132,870
Opportunity Center for the Homeless	TX	171,920
Perpetual Help Home	TX	92,983
Perpetual Help Home	TX	46,368
Perpetual Help Home	TX	33,111
Port Cities Rescue Mission Ministries	TX	175,037
Presbyterian Night Shelter	TX	712,008
Presbyterian Night Shelter	TX	181,077
Promise House, Inc	TX	269,737
Promise House, Inc	TX	220,986
PWA Coalition of Dallas, Inc. d/b/a AIDS Services of Dallas	TX	574,389
Rainbow Days, Inc	TX	257,237
Recovery Resource Council	TX	234,831
Recue Mission of El Paso, Inc	TX	46,796
Sabine Valley Center	TX	123,480
Sabine Valley Center	TX	124,226
San Antonio Metropolitan Ministry Inc	TX	104,596
Santa Maria Hostel, Inc	TX	487,280
SEARCH	TX	330,673
SEARCH	TX	96,520
Shared Housing Center, Inc	TX	93,390
Some Other Place, Inc	TX	111,888
Southeast Texas Regional Planning Commission	TX	23,008
Southern Territorial Headquarters of The Salvation Army, The	TX	349,188

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Star of Hope Mission	TX	1,154,460
Star of Hope Mission	TX	207,406
Star of Hope Mission	TX	1,041,806
Tarrant County	TX	24,237
Tarrant County	TX	21,815
Tarrant County	TX	166,404
Tarrant County	TX	106,864
Tarrant County	TX	212,663
Tarrant County	TX	103,445
Tarrant County	TX	1,063,427
Tarrant County	TX	124,665
Tarrant County	TX	322,293
Tarrant County	TX	145,435
Tarrant County	TX	50,680
Tarrant County	TX	97,293
Tarrant County	TX	85,617
Tarrant County	TX	108,491
Tarrant County	TX	333,435
Tarrant County Homeless Coalition	TX	276,849
Temenos Community Development Center	TX	633,666
Texas ReEntry Services, Inc	TX	104,482
Texas Rio Grande Legal Aid, Inc	TX	124,908
The Bridge Over Troubled Waters, Inc	TX	932,248
The Children's Center, Inc	TX	160,000
The Children's Center, Inc	TX	170,495
The Children's Center, Inc	TX	192,237
The El Paso Alliance, Inc	TX	477,452
The Family Place	TX	981,236
The Gulf Coast Center	TX	216,499
The Gulf Coast Center	TX	525,537
The Gulf Coast Center	TX	60,942
The Gulf Coast Center	TX	120,271
The Housing Authority of the City of Dallas	TX	150,552
The Housing Authority of Travis County	TX	547,392
The Housing Authority of Travis County	TX	198,096
The Salvation Army	TX	245,903
The Salvation Army, A Georgia Corporation	TX	538,081
The Salvation Army, a Georgia Corporation	TX	845,113
The Salvation Army, A Georgia Corporation	TX	137,777
The Women's Home	TX	126,717
Travis County DV & SA Survival Center, dba SafePlace	TX	613,002
Twin City Mission, Inc	TX	165,991
Twin City Mission, Inc	TX	61,363
Twin City Mission, Inc	TX	230,234
Twin City Mission, Inc	TX	32,332
United States Veterans Initiative	TX	489,977
United States Veterans Initiative	TX	110,441
Vogel Alcove	TX	166,441
Volunteers of America Texas, Inc	TX	212,069
Wellsprings Village, Inc	TX	77,293
Women Opting for More Affordable Housing Now, Inc. (WOMAN), Inc	TX	104,168
Youth and Family Alliance dba LifeWorks	TX	212,969
YWCA El Paso del Norte Region	TX	229,728
YWCA El Paso del Norte Region	TX	270,616
Bear River Association of Governments	UT	49,564
Cedar City Housing Authority	UT	13,912
Center for Women and Children in Crisis, Inc	UT	51,692
Center for Women and Children in Crisis, Inc	UT	16,252
Community Action Services and Food Bank, Inc	UT	34,926
Community Action Services and Food Bank, Inc	UT	228,653
Davis Behavioral Health Inc	UT	104,036
Family Connection Center	UT	171,149
Family Support Center	UT	32,844
Family Support Center	UT	13,003
Family Support Center	UT	67,698
Golden Spike Treatment Ranch, Inc	UT	35,056
Housing Authority of Salt Lake City	UT	365,532
Housing Authority of Salt Lake City	UT	39,648
Housing Authority of Salt Lake City	UT	181,320
Housing Authority of the County of Salt Lake	UT	824,496
Housing Authority of the County of Salt Lake	UT	411,000
Housing Authority of the County of Salt Lake	UT	348,600

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Housing Authority of the County of Salt Lake	UT	82,200
Housing Authority of the County of Salt Lake	UT	308,280
Housing Authority of Utah County	UT	14,688
Housing Authority of Utah County	UT	278,436
I Promise Foundation	UT	70,307
Mountainlands Community Housing Trust	UT	124,913
Provo City Housing Authority	UT	264,384
Provo City Housing Authority	UT	21,379
Southwest Behavioral Health Center	UT	27,182
The Erin Kimball Memorial Foundation, Inc	UT	75,091
The Road Home	UT	111,209
The Road Home	UT	36,850
The Road Home	UT	25,495
Uintah Basin Association of Governments	UT	26,985
Utah Department of Community and Culture	UT	128,047
Utah Department of Community and Culture	UT	95,104
Utah Department of Community and Culture	UT	17,455
Utah Department of Community and Culture	UT	50,741
Utah Department of Community and Culture	UT	29,904
Utah Department of Community and Culture	UT	29,899
Utah Department of Community and Culture	UT	8,220
Utah Nonprofit Housing Corporation	UT	34,913
Valley Mental Health, Inc	UT	52,545
Volunteers of America, Utah	UT	833,556
Volunteers of America, Utah	UT	99,750
Volunteers of America, Utah	UT	118,696
West Valley City Housing Authority	UT	205,500
Young Womens Christian Assn of Salt Lake City	UT	155,989
Your Community Connection of Ogden/Northern Utah	UT	67,023
AIDS/HIV Services Group	VA	60,004
Alexandria Community Services Board	VA	54,608
Alexandria Community Services Board	VA	29,812
Alexandria Community Services Board	VA	98,150
Alexandria Community Services Board	VA	131,643
Arlington County Government	VA	102,963
Arlington County Government	VA	94,872
Arlington County Government	VA	222,324
Arlington County Government	VA	102,024
Arlington County Government	VA	139,212
Arlington Street People's Assistance Network, Inc	VA	90,248
Arlington Street People's Assistance Network, Inc	VA	211,446
Arlington Street People's Assistance Network, Inc	VA	166,058
Arlington-Alexandria Coalition for the Homeless	VA	143,238
Avalon: A Center for Women and Children	VA	64,454
Barrett Haven Inc	VA	144,913
CANDII, Inc	VA	168,911
CANDII, Inc	VA	179,212
CANDII, Inc	VA	272,097
Chesapeake Community Services Board	VA	11,580
Christian Relief Services Charities, Inc	VA	30,943
Christian Relief Services Charities, Inc	VA	24,885
Christian Relief Services Charities, Inc	VA	135,673
Christian Relief Services Charities, Inc	VA	76,220
Christian Relief Services Charities, Inc	VA	120,676
Christian Relief Services Charities, Inc	VA	24,885
Christian Relief Services of Virginia, Inc	VA	291,788
Christian Relief Services of Virginia, Inc	VA	216,780
City of Lynchburg	VA	81,168
City of Portsmouth Virginia	VA	69,013
City of Portsmouth Virginia	VA	414,768
City of Richmond	VA	1,051,488
City of Richmond Department of Social Services	VA	60,480
City of Roanoke	VA	175,140
City of Roanoke	VA	137,669
City of Roanoke	VA	174,900
Commonwealth of Virginia	VA	26,250
Commonwealth of Virginia	VA	60,855
Community Alternatives Management Group, Inc	VA	111,014
Community Alternatives Management Group, Inc	VA	79,049
Community Alternatives Management Group, Inc	VA	366,954
Council of Community Services	VA	80,232
Council of Community Services	VA	17,457

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
County of Loudoun	VA	106,429
County of Loudoun	VA	64,386
Danville Redevelopment and Housing Authority	VA	67,200
Emergency Shelter, Inc	VA	544,806
Emergency Shelter, Inc	VA	99,960
Fairfax County Department of Family Services	VA	431,580
Fairfax County Department of Family Services	VA	453,346
Fairfax County Department of Housing and Community Development	VA	172,212
Fairfax County Department of Housing and Community Development	VA	61,872
Fairfax County Department of Housing and Community Development	VA	511,488
Fairfax County Department of Housing and Community Development	VA	458,892
Fairfax County Department of Housing and Community Development	VA	331,020
Fairfax-Falls Church Community Services Board	VA	254,652
ForKids inc	VA	149,166
ForKids inc	VA	23,434
ForKids inc	VA	264,687
ForKids inc	VA	125,038
ForKids inc	VA	103,804
ForKids inc	VA	46,426
ForKids inc	VA	242,043
ForKids inc	VA	42,884
George Washington Regional Commission	VA	59,305
Hampton-Newport News Community Services Board	VA	287,796
Hampton-Newport News Community Services Board	VA	57,446
Harrisonburg Redevelopment and Housing Authority	VA	42,000
Helping Overcome Poverty's Existence, Inc	VA	83,818
Helping Overcome Poverty's Existence, Inc	VA	144,845
Hilliard House	VA	262,917
Homestretch Inc	VA	150,727
Homeward	VA	15,802
Homeward	VA	21,654
Homeward	VA	26,745
Judeo-Christian Outreach Center	VA	56,247
Kurdish Human Rights Watch, Inc. (KHRW)	VA	438,973
Link of Hampton Roads, Inc	VA	323,934
Link of Hampton Roads, Inc	VA	80,359
Link of Hampton Roads, Inc	VA	114,872
Link of Hampton Roads, Inc	VA	256,582
Lynchburg Community Action Group, Inc	VA	44,665
Lynchburg Neighborhood Development Foundation	VA	64,748
Micah Ecumenical Ministries	VA	27,031
Micah Ecumenical Ministries	VA	62,988
Miriam's House, Inc	VA	87,252
Miriam's House, Inc	VA	21,357
New Hope Housing, Inc	VA	245,541
New Hope Housing, Inc	VA	121,850
New Hope Housing, Inc	VA	58,850
New Hope Housing, Inc	VA	221,122
Newport News Redevelopment and Housing Authority	VA	92,640
Norfolk Community Services Board	VA	25,000
Norfolk Community Services Board	VA	130,641
Norfolk Community Services Board	VA	330,739
Norfolk Community Services Board	VA	556,968
Northern Shenandoah Valley Regional Commission	VA	36,750
Northern Shenandoah Valley Regional Commission	VA	57,101
Northwestern Community Services	VA	61,299
Northwestern Community Services	VA	234,312
NOVACO Inc	VA	111,492
Oasis Commission on Social Ministry of Portsmouth/Chesapeake	VA	250,069
Our House Families	VA	109,798
Pathway Homes, Inc	VA	153,657
Pathway Homes, Inc	VA	157,788
People Incorporated of Virginia	VA	186,700
People Incorporated of Virginia	VA	24,751
Portsmouth Area Resources Coalition, Inc	VA	122,421
Portsmouth Area Resources Coalition, Inc	VA	45,123
Portsmouth Area Resources Coalition, Inc	VA	53,550
Portsmouth Area Resources Coalition, Inc	VA	104,832
Portsmouth Christian Outreach Ministries	VA	79,309
Portsmouth Volunteers for the Homeless	VA	55,650
Prince William Department of Social Services	VA	91,900
Prince William Department of Social Services	VA	7,094

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Prince William Department of Social Services	VA	141,156
Prince William Department of Social Services	VA	126,463
Prince William Department of Social Services	VA	134,032
Prince William Department of Social Services	VA	143,585
Prince William Department of Social Services	VA	36,230
PRS, Inc	VA	168,450
Rappahannock Refuge, Inc	VA	57,918
Region Ten Community Services Board	VA	146,160
Region Ten Community Services Board	VA	122,772
Residential Options, Inc	VA	69,237
Rush Lifetime Homes, Inc	VA	51,100
Samaritan House, Inc	VA	109,848
Samaritan House, Inc	VA	36,887
Sheltered Homes of Alexandria	VA	77,748
Sheltered Homes of Alexandria	VA	89,288
South River Development Corporation	VA	38,033
St. Columba Ecumenical Ministries, Inc	VA	130,179
St. Joseph's Villa	VA	272,000
The Daily Planet, Inc	VA	208,171
The Daily Planet, Inc	VA	90,300
The Planning Council	VA	50,533
The Planning Council	VA	54,090
The Salvation Army, a Georgia Corporation	VA	94,505
The Salvation Army. A Georgia Corporation	VA	282,604
Total Action Against Poverty in Roanoke Valley	VA	26,074
Total Action Against Poverty in Roanoke Valley	VA	264,316
Transitions Family Violence Services	VA	137,852
Trust, Roanoke Valley Trouble Center, Inc. d/b/a Trust House	VA	56,551
United Community Ministries, Inc	VA	138,216
Urban League of Greater Richmond	VA	70,350
Virginia Beach Community Development Corporation	VA	122,018
Virginia Beach Community Development Corporation	VA	75,084
Virginia Beach Community Development Corporation	VA	4,620
Virginia Beach Community Development Corporation	VA	371,406
Virginia Supportive Housing	VA	39,860
Virginia Supportive Housing	VA	48,466
Virginia Supportive Housing	VA	313,769
Virginia Supportive Housing	VA	421,688
Volunteers of America Chesapeake, Inc	VA	306,441
Waynesboro Redevelopment and Housing Authority	VA	38,154
Young Women's Christian Association of South Hampton Roads	VA	38,516
Methodist Training & Outreach Center, Inc	VI	168,352
Methodist Training & Outreach Center, Inc	VI	65,938
Addison County Community Action Group	VT	145,045
Brattleboro Housing Authority	VT	219,144
Burlington Housing Authority	VT	81,516
Burlington Housing Authority	VT	116,460
Burlington Housing Authority	VT	76,824
Burlington Housing Authority	VT	76,824
Champlain Valley Office of Economic Opportunity	VT	222,440
Howard Center, Inc	VT	200,402
Howard Center, Inc	VT	181,146
Vermont State Housing Authority	VT	62,733
Vermont State Housing Authority	VT	38,535
Vermont State Housing Authority	VT	128,400
Vermont State Housing Authority	VT	1,470,384
Vermont State Housing Authority	VT	30,000
Vermont State Housing Authority	VT	55,524
Vermont State Housing Authority	VT	74,592
Vermont State Housing Authority	VT	37,247
Vermont State Housing Authority	VT	90,455
Vermont State Housing Authority	VT	71,642
Vermont State Housing Authority	VT	26,568
Vermont State Housing Authority	VT	122,136
Vermont State Housing Authority	VT	8,427
Vermont State Housing Authority	VT	55,939
Vermont State Housing Authority	VT	69,904
Vermont State Housing Authority	VT	148,815
Archdiocesan Housing Authority	WA	197,739
Archdiocesan Housing Authority	WA	105,422
Auburn Youth Resources	WA	123,286
Bellingham Housing Authority	WA	222,144

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Bellingham Housing Authority	WA	863,388
Benton and Franklin Counties Department of Human Services	WA	95,976
Benton Franklin Community Action Committee	WA	74,472
Benton Franklin Community Action Committee	WA	125,704
Benton Franklin Community Action Committee	WA	128,308
Benton Franklin Community Action Committee	WA	180,369
Blue Mountain Action Council	WA	142,724
Building Changes	WA	387,191
Catholic Community Services	WA	201,576
Catholic Community Services	WA	110,000
Child Care Resources	WA	529,095
Church Council of Greater Seattle	WA	57,278
City of Bremerton	WA	110,712
City of Bremerton	WA	50,136
City of Bremerton	WA	39,744
City of Seattle Human Services Department	WA	105,000
City of Seattle Human Services Department	WA	548,598
City of Seattle Human Services Department	WA	326,054
City of Seattle Human Services Department	WA	462,500
City of Seattle Human Services Department	WA	80,012
City of Seattle Human Services Department	WA	121,545
City of Seattle Human Services Department	WA	30,000
City of Seattle Human Services Department	WA	838,688
City of Seattle Human Services Department	WA	183,540
City of Seattle Human Services Department	WA	181,306
City of Seattle Human Services Department	WA	25,422
City of Seattle Human Services Department	WA	517,251
City of Seattle Human Services Department	WA	492,048
City of Seattle Human Services Department	WA	443,471
City of Seattle Human Services Department	WA	79,906
City of Seattle Human Services Department	WA	114,450
City of Seattle Human Services Department	WA	168,153
City of Seattle Human Services Department	WA	294,978
City of Seattle Human Services Department	WA	586,377
City of Seattle Human Services Department	WA	81,370
City of Seattle Human Services Department	WA	1,129,355
City of Seattle Human Services Department	WA	507,350
City of Seattle Human Services Department	WA	915,072
City of Seattle Human Services Department	WA	116,397
City of Seattle Human Services Department	WA	545,049
City of Seattle Human Services Department	WA	696,732
City of Spokane	WA	44,028
City of Spokane	WA	51,424
City of Spokane	WA	77,484
City of Spokane	WA	38,215
City of Spokane	WA	38,802
City of Spokane	WA	113,220
City of Spokane	WA	6,660
City of Spokane	WA	85,723
City of Spokane	WA	106,003
City of Spokane	WA	27,739
City of Spokane	WA	280,581
City of Spokane	WA	118,908
City of Spokane	WA	14,917
City of Spokane	WA	77,175
City of Spokane	WA	56,251
City of Spokane	WA	88,698
City of Spokane	WA	106,082
City of Spokane	WA	42,621
City of Spokane	WA	187,365
City of Spokane	WA	169,684
City of Spokane	WA	169,687
City of Spokane	WA	149,232
City of Spokane	WA	167,591
City of Spokane	WA	67,164
City of Spokane	WA	381,960
City of Spokane	WA	27,799
City of Spokane	WA	89,932
Columbia Gorge Housing Authority	WA	34,332
Columbia River Mental Health Services	WA	122,414
Community Action Center	WA	19,152
Community Psychiatric Clinic	WA	75,171

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Community Psychiatric Clinic	WA	348,156
Community Services Northwest	WA	91,700
Community Services Northwest	WA	51,578
Community Youth Services	WA	151,516
Compass Health	WA	57,259
Compass Health	WA	34,600
Compass Health	WA	41,393
Compass Housing Alliance	WA	26,284
Council for the Homeless	WA	72,697
Development Association of the Goodwill Baptist Church	WA	56,642
Development Association of the Goodwill Baptist Church	WA	28,596
El Centro de la Raza	WA	17,603
Friends of Youth	WA	123,062
HopeSource	WA	46,346
Housing Authority City of Kelso	WA	90,720
Housing Authority of Island County	WA	41,040
Housing Authority of Snohomish County	WA	2,928,744
Housing Authority of the City of Bremerton	WA	136,450
Housing Authority of the City of Tacoma	WA	62,880
Housing Authority of the City of Vancouver	WA	137,664
Housing Authority of Thurston County	WA	133,921
Housing Hope	WA	29,828
Housing Hope	WA	80,315
Joint City of Republic-Ferry County Housing Authority	WA	36,316
Kent Youth and Family Services	WA	38,134
King County Department of Community and Human Services	WA	624,566
King, County of	WA	939,036
King, County of	WA	389,052
King, County of	WA	99,739
King, County of	WA	140,085
King, County of	WA	63,258
King, County of	WA	303,975
King, County of	WA	121,939
King, County of	WA	74,613
King, County of	WA	5,525,304
King, County of	WA	251,744
Kitsap County Consolidated Housing Authority	WA	24,938
Lewis County	WA	108,814
Low Income Housing Institute	WA	398,285
Low Income Housing Institute	WA	36,141
Low Income Housing Institute	WA	56,085
Low Income Housing Institute	WA	31,500
Mason County Shelter	WA	98,299
Multi-Service Center	WA	26,724
Next Step Housing	WA	46,835
Northwest Youth Services	WA	261,785
Olympic Community Action Programs	WA	135,599
Opportunity Council	WA	84,130
Opportunity Council	WA	225,514
Opportunity Council	WA	140,868
Pierce County	WA	190,188
Pierce County	WA	59,885
Pierce County	WA	76,855
Pierce County	WA	340,986
Pierce County	WA	32,444
Pierce County	WA	111,377
Pierce County	WA	143,477
Pierce County	WA	66,539
Pierce County	WA	89,527
Pierce County	WA	167,339
Pierce County	WA	29,512
Pierce County	WA	45,150
Pierce County	WA	165,201
Pierce County	WA	34,701
Pierce County	WA	201,499
Pierce County	WA	24,324
Pierce County	WA	24,741
Pierce County	WA	162,335
Pierce County	WA	259,033
Pierce County	WA	136,799
Pierce County	WA	312,900
Pierce County	WA	94,032

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Pierce County	WA	34,106
Pierce County	WA	54,023
Pierce County	WA	36,902
Pierce County	WA	89,568
Seattle Housing Authority	WA	9,896
Second Step Housing	WA	164,101
Second Step Housing	WA	92,365
Serenity House of Clallam County	WA	142,951
Serenity House of Clallam County	WA	138,769
Serenity House of Clallam County	WA	78,481
Share	WA	83,229
Share	WA	61,267
Share	WA	34,429
Skagit County Community Action Agency	WA	50,054
Skagit County Community Action Agency	WA	136,987
Snohomish, County of	WA	70,369
Snohomish, County of	WA	175,532
Snohomish, County of	WA	124,476
Snohomish, County of	WA	161,634
Snohomish, County of	WA	109,270
Snohomish, County of	WA	87,928
Snohomish, County of	WA	75,435
Snohomish, County of	WA	164,820
Snohomish, County of	WA	60,349
Snohomish, County of	WA	43,636
Snohomish, County of	WA	87,585
Snohomish, County of	WA	163,659
Snohomish, County of	WA	35,931
Snohomish, County of	WA	58,203
Snohomish, County of	WA	23,609
Snohomish, County of	WA	81,523
Snohomish, County of	WA	101,356
Solid Ground Washington	WA	158,620
Spokane Neighborhood Action Partners	WA	134,839
Spokane Neighborhood Action Partners	WA	133,448
Sun Community Service	WA	36,013
The Family Support Center of South Sound	WA	54,810
The Salvation Army	WA	77,838
The Salvation Army	WA	253,988
Triumph Treatment Services	WA	158,792
United Indians of All Tribes Foundation	WA	343,565
Vietnam Veterans Leadership Program	WA	23,579
WA State Department of Commerce	WA	143,082
Walla Walla County	WA	66,101
Washington Gorge Action Programs	WA	109,986
Womens Resource Center of North Central Washington	WA	38,758
Yakima County	WA	10,815
Yakima County	WA	48,188
Yakima County	WA	61,468
Yakima County	WA	60,879
Yakima County	WA	69,191
Yakima County	WA	10,568
YouthCare	WA	105,602
YouthCare	WA	151,856
YWCA of Seattle-King County-Snohomish County	WA	78,878
YWCA of Seattle-King County-Snohomish County	WA	167,867
YWCA of Seattle-King County-Snohomish County	WA	29,683
YWCA of Seattle-King County-Snohomish County	WA	103,619
YWCA of Seattle-King County-Snohomish County	WA	57,319
YWCA of Seattle-King County-Snohomish County	WA	85,614
YWCA of Seattle-King County-Snohomish County	WA	42,540
YWCA of Seattle-King County-Snohomish County	WA	72,245
ADVOCAP, Inc	WI	197,658
ADVOCAP, Inc	WI	158,583
ADVOCAP, Inc	WI	110,216
CAP Services, Inc	WI	105,025
Catherine Marian Housing, Inc	WI	55,053
Center for Veterans Issues, Ltd	WI	132,021
Center for Veterans Issues, Ltd	WI	170,568
Center for Veterans Issues, Ltd	WI	94,831
Center for Veterans Issues, Ltd	WI	947,043
Center for Veterans Issues, Ltd	WI	415,911

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
Central Wisconsin Community Action Council, Inc	WI	262,322
City of Appleton	WI	51,513
City of Appleton	WI	177,763
Community Action Coalition for South Central Wisconsin, Inc	WI	226,190
Community Action Coalition for South Central Wisconsin, Inc	WI	165,020
Community Action, Inc. of Rock & Walworth Counties	WI	517,583
Community Advocates, Inc	WI	428,544
Community Advocates, Inc	WI	120,514
Community Advocates, Inc	WI	693,053
Community Advocates, Inc	WI	403,631
Community Development Partners, Inc	WI	97,815
Community Development Partners, Inc	WI	126,721
Couleecap, Inc	WI	366,316
Couleecap, Inc	WI	254,126
Couleecap, Inc	WI	737,846
Dane County, WI	WI	815,028
Family Services of Northeast Wisconsin	WI	159,800
Forward Service Corporation	WI	402,991
Guest House of Milwaukee, Inc	WI	837,503
Guest House of Milwaukee, Inc	WI	235,625
Guest House of Milwaukee, Inc	WI	180,454
Guest House of Milwaukee, Inc	WI	196,230
Health Care for the Homeless of Milwaukee, Inc	WI	255,068
Health Care for the Homeless of Milwaukee, Inc	WI	450,454
Hebron House of Hospitality, Inc	WI	167,071
Hebron House of Hospitality, Inc	WI	116,535
Homeless Assistance Leadership Organization, Inc	WI	304,934
Homeless Assistance Leadership Organization, Inc	WI	114,804
Homeless Assistance Leadership Organization, Inc	WI	114,428
Hope House of Milwaukee, Inc	WI	579,715
Hope House of Milwaukee, Inc	WI	65,514
Hope House of Milwaukee, Inc	WI	30,679
HOPES Center of Racine, INC	WI	51,969
Housing Initiatives, Inc	WI	11,659
Kenosha Human Development Services, Inc	WI	126,651
Kenosha Human Development Services, Inc	WI	141,095
Lakeshore CAP, Inc	WI	117,663
Legal Action of WI, Inc	WI	80,536
Legal Action of Wisconsin	WI	111,300
Legal Action of Wisconsin, Inc	WI	16,000
Meta House, Inc	WI	130,385
Meta House, Inc	WI	328,031
Meta House, Inc	WI	121,092
Milwaukee County of	WI	419,979
Milwaukee County of	WI	2,841,696
My Home, Your Home, Inc	WI	183,547
North Central Community Action Program, Inc	WI	177,165
Northwest Wisconsin Community Services Agency Inc	WI	92,612
Northwest Wisconsin Community Services Agency Inc	WI	113,670
Porchlight, Inc	WI	123,827
Porchlight, Inc	WI	62,194
Porchlight, Inc	WI	61,820
Porchlight, Inc	WI	162,742
Porchlight, Inc	WI	50,768
Porchlight, Inc	WI	111,373
Porchlight, Inc	WI	344,766
Project New Life, CDC	WI	152,028
Racine Vocational Ministry, Inc	WI	28,941
Richard's Place Inc	WI	112,555
Richard's Place Inc	WI	144,841
St. Aemilian-Lakeside, Inc	WI	167,828
St. Catherine Residence, Inc	WI	144,379
Starting Points, Inc	WI	182,179
Starting Points, Inc	WI	509,525
Starting Points, Inc	WI	117,400
State of Wisconsin	WI	364,486
State of Wisconsin	WI	244,404
Tellurian UCAN, Inc	WI	155,106
Tellurian UCAN, Inc	WI	66,415
Tellurian UCAN, Inc	WI	249,165
Tellurian UCAN, Inc	WI	64,575
The Road Home Dane County	WI	54,995

CONTINUUM OF CARE PROGRAM GRANT AWARDS FROM FY 2010 NOTICE OF FUNDING AVAILABILITY—Continued

Recipient	State	Amount
The Salvation Army	WI	38,193
The Salvation Army	WI	42,500
The Salvation Army	WI	31,473
The Salvation Army	WI	229,270
WALKER'S POINT YOUTH AND FAMILY CENTER	WI	195,781
Walworth County Housing Authority	WI	85,079
West Central Wisconsin Community Action Agency, Inc	WI	434,523
Western Dairyland Economic Opportunity Council, Inc	WI	264,926
Women and Children's Horizons Inc	WI	220,566
Women's Resource Center of Racine	WI	16,963
Women's Resource Center of Racine	WI	19,066
Young Women's Christian Association of the Coulee Region	WI	73,322
YWCA Greater Milwaukee	WI	116,549
YWCA of Madison, Inc	WI	375,095
Bartlett House, Inc	WV	423,400
Cabell-Huntington Coalition for the Homeless, Inc	WV	130,846
Cabell-Huntington Coalition for the Homeless, Inc	WV	211,811
Caritas House, Inc	WV	131,157
Charleston-Kanawha Housing	WV	118,800
Charleston-Kanawha Housing	WV	118,800
City of Charleston	WV	99,144
Clarksburg Housing Authority	WV	151,452
Community Networks, Inc	WV	76,756
Greater Wheeling Coalition for the Homeless	WV	250,272
Greater Wheeling Coalition for the Homeless	WV	11,200
Greater Wheeling Coalition for the Homeless	WV	26,536
Greater Wheeling Coalition for the Homeless	WV	135,796
Housing Authority of Mingo County	WV	81,220
Huntington West Virginia Housing Authority	WV	90,720
Huntington West Virginia Housing Authority	WV	389,460
Huntington West Virginia Housing Authority	WV	38,274
Huntington West Virginia Housing Authority	WV	29,760
Huntington West Virginia Housing Authority	WV	327,504
Huntington West Virginia Housing Authority	WV	376,524
Huntington West Virginia Housing Authority	WV	59,520
Huntington West Virginia Housing Authority	WV	37,495
Kanawha Valley Colective, Inc	WV	50,000
Kanawha Valley Colective, Inc	WV	13,999
Mid-Ohio Valley Fellowship Home, Inc	WV	9,838
Opportunity House, Inc	WV	50,281
Opportunity House, Inc	WV	285,240
Parkersburg Housing Authority	WV	144,720
Prestera Center for Mental Health Services	WV	138,002
Prestera Center for Mental Health Services	WV	133,562
Raleigh County Community Action Association, Incorporated	WV	320,153
Religious Coalition for Community Renewal	WV	72,513
Roark-Sullivan Lifeway Center	WV	250,071
Stop Abusive Family Environments, Inc	WV	135,799
Telamon Corporation	WV	70,209
Telamon Corporation	WV	138,457
West Virginia Coalition to End Homelessness	WV	293,905
West Virginia Coalition to End Homelessness	WV	90,930
Westbrook Health Services, Inc	WV	32,628
Worthington Mental Health Services, Inc	WV	46,857
Young Women's Christian Association	WV	174,126
Young Women's Christian Association of Charleston, WV	WV	29,858
Young Women's Christian Association of Charleston, WV	WV	62,697
Community Action Partnership of Natrona County	WY	113,175
Council of Community Services	WY	61,016
Self Help Center, Inc	WY	97,660
Wyoming Community Network	WY	66,666
Total		1,628,387,474

[FR Doc. 2012–3016 Filed 2–9–12; 8:45 am]

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FEDERAL REGISTER

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No. 28 February 10, 2012

Part V

Small Business Administration

13 CFR Part 121

Small Business Size Standards: Professional, Technical, and Scientific Services; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG07

Small Business Size Standards: Professional, Technical, and Scientific Services

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing 37 small business size standards for 34 industries and three sub-industries (''exceptions'' in SBA's table of small business size standards) in North American Industry Classification System (NAICS) Sector 54, Professional, Technical, and Scientific Services. SBA is also increasing the one size standard in NAICS Sector 81, Other Services, which it did not review in 2010. These size standards are all receipts based. SBA is retaining the current standards for the remaining industries in NAICS Sector 54. This rule also removes ''Map Drafting'' as the ''exception'' to NAICS 541340, Drafting Services. As part of its ongoing comprehensive review of all size standards, SBA has evaluated every receipts based size standard in NAICS Sector 54 as well as the one previously unreviewed size standard in NAICS Sector 81 to determine whether the existing standards should be retained or revised.

DATES: This rule is effective March 12, 2012.

FOR FURTHER INFORMATION CONTACT: Khem Sharma, Ph.D., Chief, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Supplementary Information

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—receipts and number of employees. Financial assets, electric output, and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income based size standards. At the start of the current comprehensive size standards review, SBA's size standards consisted of 41 different size levels, covering 1,141 NAICS industries and 18 sub-industry activities (or ''exceptions''). Of these size levels, 31 were based on average annual receipts, seven were based on number of employees, and three were based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular, that they do not reflect changes in the Federal contracting marketplace and industry structure. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and where necessary, to revise current size standards.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111–240. The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing a group of related industries on a Sector by Sector basis.

As part of SBA's ongoing comprehensive review of size standards, the Agency reviewed all receipts based small business size standards in NAICS Sector 54, Professional, Technical, and Scientific Services, and one size standard in NAICS Sector 81, Other Services, to determine whether they should be retained or revised. SBA published a proposed rule for public comment in the **Federal Register** on March 16, 2011 (76 FR 14323), which proposed to increase the size standards for 35 industries and one sub-industry in NAICS Sector 54 and one industry in NAICS Sector 81. The proposed rule and this final rule concern only NAICS 811212, Computer and Office Machine Repair and Maintenance, in NAICS Sector 81. When SBA reviewed the size standards for NAICS Sector 81, it advised the public that it would review NAICS 811212 when it reviewed the receipts based size standards for NAICS Sector 54 because this industry shares a common size standard with computer-related services in that Sector.

SBA has developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards, when necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comments and included it as a supporting document in the electronic docket of the March 16, 2011 proposed rule at *www.regulations.gov,* Docket ID SBA–2009–0008, posted October 31, 2009.

As described in the proposed rule, when it evaluates an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size), the level and small business share of Federal contracts within the industry, the potential impact on SBA financial assistance programs, and dominance in the field of operations. SBA analyzed the characteristics of all industries with receipts based size standards in NAICS Sector 54 and one industry in NAICS Sector 81 mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2007 Economic Census (which is the latest available data). SBA evaluated Federal contracting activities in those industries using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2008 to 2010. To evaluate the impact of proposed changes to size standards on its loan programs, SBA analyzed its internal data on its guaranteed loan programs for fiscal years 2008 to 2010.

SBA's ''Size Standards Methodology'' provides a detailed description of analyses of various industry and program factors and data sources and

derivation of size standards using the results. In the March 16, 2011 proposed rule, SBA detailed how it applied its ''Size Standards Methodology'' to review, and modify where necessary, the existing receipts based standards in NAICS Sector 54 and one size standard in NAICS Sector 81. SBA sought comments from the public on a number of issues about its ''Size Standards Methodology,'' such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's definitions of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology due to the lack of comprehensive data; and whether there are other facts or issues that SBA should consider in its methodology.

In the proposed rule, SBA proposed to increase receipts based size standards for 35 industries and one sub-industry in NAICS Sector 54 and one industry in NAICS Sector 81, based on its analyses of the latest industry data, Federal procurement data, and other relevant data. Although SBA's analyses suggested lowering the existing size standards for some industries, SBA believes, as the proposed rule pointed out, that lowering size standards and thereby reducing the number of firms eligible to participate in Federal small business assistance programs would run counter to what the Agency and the Federal Government are doing to help small businesses and to create jobs.

The decision to not lower size standards is consistent with SBA's final rules covering NAICS Sector 44–45, Retail Trade (75 FR 61597, October 6, 2010); NAICS Sector 72, Accommodation and Food Services (75 FR 61604, October 6, 2010); and Sector 81, Other Services (75 FR 61591, October 6, 2010). In each of those final rules, SBA adopted its proposal not to reduce any size standards for the same reasons it provided in the March 16, 2011 proposed rule. Therefore, SBA proposed to retain the existing size standards when its analysis suggested lowering them.

Summary of Comments

SBA sought comments on its proposal to increase size standards for 35 industries and one sub-industry in NAICS Sector 54 and one industry in NAICS Sector 81 and to retain the existing size standards for the remaining industries in NAICS Sector 54. SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed size standard levels are appropriate and whether it should adopt common size standards for several Industry Groups in NAICS Sector 54. SBA received 1,426 public comments to the proposed rule. Many of them were duplicative and/or from the same individual. Below is a discussion of the issues and concerns the commenters raised and SBA's responses.

General Summary of Comments

SBA received 1,426 comments on the proposed rule from about 1,320 unique members of the public representing individuals, about 850 firms, and a dozen trade groups and professional associations. Ninety-five percent of the comments applied to industries covered by the proposed rule, about three percent did not reference any NAICS codes, and the remainder related to other Industries or Sectors. Of the total comments that related to SBA's proposed revisions to the size standards for 35 industries and one sub-industry in NAICS Sector 54 and one industry in NAICS Sector 81, 30 percent supported SBA's proposed revisions, 53 percent opposed the proposed revisions, and 12 percent supported SBA's effort to increase size standards but recommended smaller increases. The rest of the comments remained neutral, took other positions, or raised other related issues.

Commenters supporting SBA's proposed increases in size standards believed that higher size standards will enable small businesses to grow and be able to compete fully and openly in the Federal market, effectively compete against largest firms in their industries for Federal contracts, retain or regain small business size eligibility for Federal assistance, and successfully perform and meet size and other requirements associated with Federal contracts. Many also believed higher size standards would expand the pool of qualified small businesses, allowing Federal agencies to meet their needs and for large prime contractors to meet small business subcontracting goals. Many commenters, especially those in the architectural and engineering (A&E) area, felt that current size standards are too low and should be increased given the changes in industry structure and the Federal marketplace. Many supporting the proposed $19 million size standard for the A&E group believed increased utilization of subcontracting and inflation also warranted an increase.

Most commenters opposing the proposed rule believed that small businesses under the current size standards would face adverse competition with the newly defined small businesses under the proposed increases. Many contended that if the proposed increases are adopted, an exorbitant percentage of businesses, including many mid-sized and large businesses, will qualify as small, thereby increasing competition for small business opportunities in the Federal market. Many others also felt that the proposed size standards do not reflect ''what is truly small.'' Many commenters in architectural and landscape architectural services pointed out that a vast majority of firms either operate as sole proprietors or have fewer than 20 employees and do not need a higher size standard.

Commenters' positions on SBA's proposed revisions to size standards varied significantly by industry categories, with an overwhelming majority of comments opposing SBA's proposed increases to size standards for NAICS 541310 (Architectural Services) and NAICS 541320 (Landscape Architectural Services) and the majority of comments supporting SBA's proposed increases to size standards for most other industries. Additionally, several commenters also provided feedback on SBA's size standards methodology and data sources it used, as well as various issues with Federal procurements. These results are summarized below by industry and type of issues.

Detailed Summary of Comments by Industry/Industry Group

NAICS Industry Group 5411—Legal Services

SBA received only one comment opposing the proposed increase in size standards for all industries in NAICS Industry Group 5411 from $7 million to $10 million in average annual revenues. Since the commenter provided no explanation or specific information for opposing the proposed increase, SBA is adopting its proposed $10 million common size standard for all industries within in NAICS Industry Group 5411.

NAICS Industry Group 5412—Accounting, Tax Preparation, Bookkeeping, and Payroll Services

NAICS Industry Group 5412 received 10 comments, including four at the 4-digit level (*i.e.,* no specific industries were identified at the 6-digit NAICS level), four for NAICS 541211 (Offices of

Certified Public Accounts), one for NAICS 541213 (Tax Preparation Services), and one for NAICS 541219 (Other Accounting Services). All comments on NAICS 541211, NAICS 541213, and NAICS 541219 supported SBA's effort to increase the current size standards but recommended $25.5 million, a much larger increase than SBA's proposed $14 million.

SBA received comments concerning its proposed size standards for NAICS 541211 (Offices of Certified Public Accountants) and NAICS 541219 (Other Accounting Services) from two associations representing the accounting profession, including one which testified on the May 5, 2011 hearing entitled ''Professional Services: Proposed Changes to the Small Business Size Standards'' before the Subcommittee on Economic Growth, Tax and Capital Access of the U.S. House Committee on Small Business. The association that testified before Congress submitted a copy of its congressional testimony as its public comments on the proposed rule. In the testimony, the association indicated that it was ''evident that the source data referenced above [*i.e.,* SBA's sources] used in this calculation did not adequately reflect the accounting profession.'' The association also provided SBA with additional data, including the estimated values from the results of industry surveys, covering accounting firms of all sizes. SBA had previously met with representatives from both associations regarding the standards for these industries, without discussing what changes the Agency was considering to propose. SBA explained its size standards methodology and indicated its openness to considering other data and information that the associations might have to support the size standard they suggested. Because the two sets of comments were very similar, SBA will discuss them together, below.

The associations concluded that the substitution of their data in SBA's calculations would support a $19 million size standard for NAICS 541211 and NAICS 541219. However, they proposed that SBA adopt a $25.5 million size standard to account for secondary factors related to changes in Federal procurement policies and practices, including contract bundling and larger Federal contracts.

The primary factors underlying the associations' support of a $19 million size standard for these two industries were their recalculations of the four-firm concentration ratio and Gini coefficient values using their data. Under SBA's analysis based on the 2007 Economic Census, the proposed $14 million size standard did not include the four-firm concentration ratio because it was calculated to be less than 40 percent. However, the associations' calculations resulted in a four-firm concentration ratio higher than 40 percent, supporting a higher $19 million size standard for that factor. Likewise, SBA's calculations of the Gini coefficient value supported a $10 million size standard, whereas the associations obtained a higher Gini coefficient value that supported a $19 million size standard.

SBA had proposed a $14 million common size standard for all industries in NAICS Industry Group 5412, including NAICS 541211 and NAICS 541219. The associations suggested that, based on their data alone, the size standards for those industries should be $19 million. However, as stated above, the associations recommended that the size standard be increased to $25.5 million, in consideration of secondary factors affecting the ability of small accounting firms to compete for Federal contracts. They commented that the $25.5 million size standard would enable small accounting firms to grow and build expertise and infrastructure to be able to meet the requirements for today's larger Federal contracts. The associations pointed out that there are fewer than 30 accounting firms with average annual revenues between $19 million and $25.5 million. They also noted that a firm at the $19 million revenue level is comparable to a firm at the $25 million revenue level in terms of the number of professionals it employs, suggesting that such firms are similarly capable to compete for and perform Federal contracts.

SBA gave due consideration to the analytical results and secondary factors that the associations presented. Despite having some concerns with their data (as discussed elsewhere in this rule), SBA generally accepts their findings and characterizations of the Federal marketplace, which seem to support a size standard higher than the proposed $14 million size standard for those industries. However, SBA is concerned that the $25.5 million size standard could put many small accounting firms at a significant competitive disadvantage for contracting opportunities, while benefiting only a limited number of relatively larger firms. Accordingly, SBA is adopting $19 million as the appropriate size standard for NAICS 541211 and NAICS 541219. To be consistent with its proposal to use a common size standard for all industries in NAICS Industry Group 5412, SBA is also adopting the same $19 million size standard for the remaining two industries in the Group (NAICS 541213 and NAICS 541214).

NAICS Industry Group 5413—Architectural, Engineering, and Related Services

SBA proposed a $19 million common size standard for all industries in NAICS Industry Group 5413 based on its evaluation of industry and Federal procurement factors for the entire Architectural and Engineering (A&E) group and its interest in maintaining the common size standard that is currently in place for most industries in the industry group. SBA received more than 1,200 comments on NAICS Industry Group 5413, of which 60 percent applied to NAICS 541310 (Architectural Services), nearly 20 percent to NAICS 541330 (Engineering Services), six percent to NAICS 541320 (Landscape Architectural Services), and seven percent to other A&E industries at the 6-digit level. The remaining seven percent were limited to NAICS Industry Group 5413 as a group. SBA discusses the results by NAICS industry below.

NAICS 541310—Architectural Services; and NAICS 541320—Landscape Architectural Services

SBA is increasing the current $4.5 million size standard to $7 million for NAICS 541310 (Architectural Services) and retaining the current $7 million size standard for NAICS 541320 (Landscape Architectural Services). In response to the comments, SBA re-evaluated its proposal and determined that industry specific size standards that are lower than proposed are more appropriate for these industries.

Of the 1,426 public comments that SBA received, over one-half addressed SBA's proposed $19 million standard for these two industries. In general, commenters overwhelmingly opposed the proposed increases, and many offered alternatives. Two associations, one representing NAICS 541310 (Architectural Services) and the other representing NAICS 541320 (Landscape Architectural Services), were among the commenters. However, the number of supportive comments was not insignificant, and many of them opposed the position of the associations representing architectural firms.

Of the comments that applied to NAICS 541310 (about 735 in total), 87 percent opposed SBA's proposal to increase the size standard to $19 million, mostly arguing in support of the current $4.5 million. Only about six percent supported $19 million as proposed, while six percent supported a smaller increase. Several commenters

supporting the smaller increase recommended, as an alternative to SBA's proposed $19 million, size standards ranging from $5 million to $14 million and averaging about $8 million.

Similarly, of the comments concerning NAICS 541320 (about 70 in total), 78 percent opposed SBA's proposal to increase the size standard for this industry, mostly in support of the existing $7 million size standard and some suggesting to lower it. Of the 14 comments that supported an increase, half supported the proposed increase to $19 million, while the other half supported a smaller increase. A few provided alternative size standards, ranging from $8.5 million to $14 million and averaging about $11 million.

SBA proposed a $19 million size standard to be consistent with its past use of a common size standard for several industries within NAICS Industry Group 5413, including NAICS 541310 and NAICS 541320. SBA acknowledges that the industry specific data did not necessarily support the proposed $19 million size standard for these individual industries, but SBA proposed that level in the interest of maintaining a common size standard for industries in NAICS Industry Group 5413. In its 1999 final rule (64 FR 26275), SBA adopted a common standard for these industries in response comments it received to its earlier proposed rule (63 FR 5480). In its March 16, 2011 proposed rule, SBA proposed continuing that practice.

Several commenters on NAICS 541310 (Architectural Services) and NAICS 541330 (Engineering Services) noted that each of these two industries is very distinct and stated that SBA should not use a common size standard for them. They noted that significant differences between these industries in terms of their primary industry factors, such as average firm size and distribution of firms as reflected in the Gini coefficient, do not support using a common size standard for them.

An architectural industry association pointed out that SBA's view of most firms being multi-disciplinary ''does not match the reality of smaller architecture groups.'' The association stated that small firms do not have engineers or other specialties on their payroll until they are quite substantial in size. Rather, the smaller architectural firms subcontract those services to others. The association stated that average billings for firms with up to 35 employees are under $5 million. A landscape architectural association indicated that SBA's proposed $19 million was not an accurate reflection of the industry's receipts and recommended that SBA retain the current $7 million size standard. It urged SBA to target its analysis to this industry alone and not include it in the $19 million common size standard that it proposed for the other industries in the A&E group.

Generally, those who supported SBA's proposed increases for NAICS 541310 and NAICS 541320 indicated that, if adopted, firms in these industries would be able to grow and develop in the open market, compete against larger businesses, transition from small to the next level of entrepreneurship, perform on larger Federal contracts, and retain or regain their small business size status. These reasons are pertinent to why SBA should increase the size standards for these industries. Nevertheless, based on the Agency's reexamination of the industry and Federal procurement data in conjunction with its evaluation of public comments, SBA does not believe it should increase the size standards for these industries to the level it proposed. In fact, industry specific data do not support anything higher than the $7 million size standard for NAICS 541310. Because SBA is not adopting the proposed $19 million common A&E size standard for these industries, it is adopting the size standards that it derived based on industry specific and on the other relevant data as described in the proposed rule.

Generally, those who opposed SBA's proposed increases to the size standards for NAICS 541310 and NAICS 541320 indicated that, if adopted, these standards would define too many companies as small, create adverse competition from the newly defined small businesses, include mid-sized and large businesses as small, include dominant firms, and not represent ''truly small'' firms (addressed elsewhere in this rule). A number of comments recommended that SBA should apply industry specific size standards rather than including these industries under the $19 million proposed common size standard, and that SBA should analyze alternative industry data provided by the relevant associations. Many commenters pointed out that the architectural industries are economically depressed and stated that the current size standards ($4.5 million for NAICS 541310 and $7 million for NAICS 541320) are already too high. A substantial number of comments supported their respective association's position to oppose SBA's proposal.

Industry factors and other relevant data that SBA used for the March 16, 2011 proposed rule support a $7 million size standard for NAICS 541310 (which is an increase from the current $4.5 million size standard) and a $5 million size standard for NAICS 541320 (which is lower than the current $7 million size standard). The proposed rule stated that SBA will not lower any small business size standards because if it did so, some existing small businesses could lose their eligibility, which would be counter-productive in the current economic climate. Therefore, SBA is retaining the current $7 million size standard for NAICS 541320.

Several individual comments and the architectural industry association suggested that SBA explore ways to modify its definition of receipts to allow for the exclusion of amounts paid to third-party subcontractors (referred to as ''pass throughs''). The association indicated that many of its members report they ''pay between 15–50 percent of their receipts to third-party subcontractor [sic].'' SBA addresses this issue elsewhere in this rule. To summarize, SBA does not allow for the exclusion of ''pass throughs'' because they are part of the usual and customary costs of doing business. SBA acknowledges that the architectural industry and other industries may have substantial subcontracting costs, and as such, SBA considers ''pass throughs,'' and other similar factors, as secondary factors when it establishes small business size standards. Specifically, SBA uses industry data from the 2007 Economic Census (discussed above), and that data, which firms report (under law) to the Census Bureau, include the firm's revenue, which includes those costs.

The architectural association also stated that about 80 percent of firms in its industry have fewer than 10 employees and requested that SBA consider using employees rather than receipts as a size standard to target smaller firms. SBA has previously taken this suggestion into consideration and has decided not to adopt it. In March 2004, SBA proposed a size standard of 50 employees and maximum annual receipts of $7 million (69 FR 13130). In that proposed rule, which covered nearly all industries including Architectural Services, SBA proposed to base all size standards on number of employees instead of annual receipts and other measures. In response, there were myriad and varied comments, mostly opposing the proposed rule. Thus, SBA withdrew the proposed rule in July 2004. Over the years, comments have generally supported receipts based size standards for service industries in the various Sectors, including NAICS Sector 54. Although SBA requested comments on whether employee based

standards would be more appropriate for certain industries in NAICS Sector 54, there were not many commenters supporting such a change.

The association also requested SBA to consider developing a ''micro-metric'' for the architectural industry. A number of individual commenters also recommended that SBA consider creating a ''micro-business'' category to target Federal assistance to ''truly small'' businesses. The Small Business Act gives SBA's Administrator the authority to determine what constitutes a small business concern for Federal government programs, but the Act does not provide for definitions other than small. The Small Business Competitiveness Demonstration (CompDemo) Program provided for an Emerging Small Business (ESB) category, under which an ESB concern was one that was at or below half the size standard for its industry, and it applied to architectural firms. However, the Jobs Act terminated the CompDemo Program, effective September 27, 2010. Public Law 111–240, sec. 1335 (Sept. 27, 2010).

SBA believes that the size standards that it is adopting will allow small architectural firms to grow without having to compete with very large businesses. Although the revised size standards may redefine about 600 currently large (''other than small'') firms as small, this represents only 2.5 percent of total firms in NAICS 541310. In addition, these size standards will allow Federal agencies to set aside more contracts for small business concerns. Prior to the repeal of the CompDemo Program, firms in the architectural and engineering services industries were effectively competing in the open market, because most contracts were ''full and open.'' Small business set-asides were only required when an agency participating in the CompDemo Program did not meet its small business goals. With the adoption of these size standards, combined with the repeal of the CompDemo Program, SBA believes there will be more set-asides contracts for more small businesses.

NAICS 541330—Engineering Services

SBA received about 240 comments on NAICS 541330 (Engineering Services). More than 60 percent fully supported the proposed increase in the size standard from $4.5 million to $19 million. Another 16 percent supported a smaller increase than proposed by SBA. About 12 percent opposed the $19 million proposed size standard in support of the current size standard of $4.5 million, while 11 percent took other positions. Several of those who supported a size standard lower than SBA's proposed $19 million but higher than the current $4.5 million provided alternative size standards, ranging from $6.5 million to $12.5 million and averaging about $10 million.

One commenter strongly supported SBA's proposal to increase the size standard for NAICS 541330 from $4.5 million to $19 million. The comment indicated that under the current size standard, small businesses are only able to perform a small portion of work under the set-aside contracts they are awarded and need to subcontract the majority of the work, often to large businesses, which defeats the very intent of the small business program. The comment also indicated that engineering firms in the $5 million to $15 million revenue range have very limited opportunities to compete effectively for Federal contracts in full and open competition, although they have the best qualifications, in terms of complexity and scope, to meet the requirements of Federal contracts for professional services. The commenter believed that the higher size standard will enable a larger pool of small businesses to participate in the Federal market as prime contractors and to perform the majority of small business set-aside contracts by themselves. The commenter further stated that the proposed $19 million size standard for engineering services will enable more small businesses to participate in more complex and larger Indefinite Delivery Indefinite Quantity (IDIQ) multiple award contracts (MACs). The comment pointed out that businesses that exceed the $4.5 million size standard by a small margin lack the capabilities to effectively compete with large firms with thousands of employees. SBA generally agrees with this comment and based on its reevaluation of data and comments on the proposed rule, the Agency has decided to increase the size standard for NAICS 541330 to $14 million.

Another commenter supportive of the proposed increase noted that the improvement in national infrastructure will be the key to job creation and long-term economic growth, and this effort will require the professional services of architects, engineers, surveyors, *etc.* However, under the current $4.5 million size standard, many small businesses cannot participate in Federally funded projects. Upon graduation, firms with $5 million in revenue are forced to compete with firms that are much larger than they are. Thus, under the current size standard, it is mostly the large firms with hundreds of millions of dollars in revenue and thousands of employees that benefit. Large prime contractors are required to subcontract a portion of a Federal contract to small businesses. Thus, once they exceed the current size standard, small businesses lose teaming and subcontracting opportunities with large prime contractors. Relying on data from Engineering News Record regarding revenues for the largest architectural and engineering companies, the comment indicated that disparities in market share and average revenue between large firms and small firms have significantly increased in recent years, with the recent economic recession exacerbating this situation. The commenter pointed out that the average annual revenue of the top 100 engineering and design firms is about $650 million, and postured that since five percent of that value is $32.5 million, $19 million was an easily supportable size standard. According to the commenter, under the $19 million proposed size standard, there will be more opportunities for small businesses to grow and create jobs, and large businesses will have a larger and more talented pool of small businesses for their teaming and subcontracting needs. The commenter also noted that ''pass throughs'' (*i.e.,* fees and costs for supporting consultants) account for 35 percent of the gross revenues of architects, engineers and surveyors and suggested that SBA consider this factor when evaluating the size standard. The commenter believed that these ''pass throughs'' also warrant the proposed $19 million size standard. After exceeding the current size standard, many formerly small businesses are unable to compete with their larger counterparts, and thus are forced to be acquired by larger firms, which often results in job losses when redundant jobs are eliminated in the process. The commenter stated that SBA's proposed $19 million size standard will help small businesses overcome these challenges. The commenter believed that increasing the size standard to $19 million would not create a significant competitive disadvantage for firms below the current size standard. The commenter also believed that the proposed increase was supported by the fact that while most other size standards in NAICS Sector 54 had been increased over the years for inflation, the engineering, architectural, and surveying size standard often remained unchanged. SBA generally agrees with these arguments and based on its reevaluation of data and comments on the proposed rule, the Agency has decided to increase the size standard for NAICS 541330 to $14 million.

Another commenter believed that an increase to the current size standard was long overdue and strongly supported SBA's proposal to increase it to $19 million because this would allow small businesses to win larger and multiple multiyear IDIQ contracts, thereby allowing them to grow and become more competitive. According to the commenter, under the current $4.5 million size standard, a small business is unable to win several simultaneous IDIQ contracts in NAICS 541330 because just one or two such contracts would cause it to exceed the size standard. Once a small business exceeds the size standard, it is forced to compete with large companies with thousands of employees and significantly more resources. Thus, under the current size standard, small businesses are unable to develop the capabilities to meet the complex technical requirements for most IDIQ and other contracts under NAICS 541330. As such, the commenter supported the proposed $19 million size standard. Additionally, the commenter questioned the rationale underlying a higher $7 million size standard for interior designers and landscape architects and a lower $4.5 million size standard for architects and engineers. The commenter also pointed out that the proposed increase would expand the pool of qualified small businesses for Federal agencies to meet their small business contracting goals. SBA generally agrees with these points and based on public comments and reevaluation of relevant data, the Agency has adopted a $14 million size standard for NAICS 541330. SBA believes this higher size standard will expand Federal contracting opportunities for small businesses.

A national association representing nearly 5,500 engineering firms also commented on SBA's proposed $19 million size standard for NAICS 541330. While the association supported SBA's efforts to address the need to update the existing $4.5 million size standard, it recommended a more moderate increase to $10 million. It commented that the size standard should be increased to keep pace with inflation and to accommodate the need to provide services to the Federal government. However, the association expressed concern that SBA's proposed increase to $19 million was too high, citing various issues with the Economic Census and FPDS–NG data that SBA used in its evaluation (as discussed elsewhere in this rule) and the impact that a large increase in the size standard might have on the industry. Specifically, the association commented that the proposed $19 million size standard was too high based on the fact that the majority of its members are very small, with fewer than 30 employees.

However, a large percentage of firms have fewer than 30 employees for all industries in NAICS Sector 54. In fact, for most other professional services, the proportion of firms with fewer than 50 employees is much higher than for engineering services. For example, based on the 2007 Economic Census, 86 percent of firms in NAICS 541330 have fewer than 20 employees and 94 percent have fewer than 50 employees, compared to 94 percent and 97 percent, respectively, for all industries within NAICS Sector 54, most of which have much higher size standards than $4.5 million and some higher than $19 million.

In addition, the association expressed concerns that increasing the size standard from $4.5 million to $19 million would (1) provide a competitive advantage to larger firms over their truly small counterparts; (2) allow more than 90 percent of engineering firms to qualify as small; (3) limit fair and open competition among qualified firms under the ''rule of 2''; and (4) harm the public and the Federal government through reduced performance and higher costs. SBA disagrees with these arguments.

As a preliminary matter, SBA points out that comparing the $4.5 million size standard with a standard of $19 million is somewhat misleading. If SBA had adopted the proposed $7.5 million size standard for Engineering Services in 1999, then with inflation adjustments, that would be about $10 million today. In that case, the proposed increase to $19 million would not appear as dramatic. Regarding the association's first concern, SBA notes that increasing size standards does not necessarily put firms that are small under the current standards at a competitive disadvantage. In fact, increasing size standards can have an opposite impact. With higher size standards and a larger pool of businesses qualifying as small, Federal agencies are likely to utilize more small business set-asides, thereby increasing opportunities for all small businesses. As stated above, the majority of comments received on NAICS 541330 supported the proposed $19 million size standard, contending, in part, that this increase will enable firms below that level to develop and become competitively viable. Second, it is true that more than 90 percent of engineering firms will qualify as small under the $19 million size standard. This is fully consistent with other industries in NAICS Sector 54, where more than 95 percent of businesses (and for some industries, as much as 99 percent of businesses), qualify as small under both current and proposed size standards. However, businesses qualifying as small under the $19 million size standard account for less than 29 percent of total revenues in NAICS 541330, as compared to the average of 49 percent for other industries within NAICS Sector 54. SBA believes that the share of industry revenues is a more robust and informative indicator of small business participation in the marketplace than the percentage of firms covered by a size standard. Third, since more businesses can qualify to compete for Federal small business set-aside contracts under higher size standards, there will be more competition under the ''rule of 2,'' not less. Fourth, with larger size standards, as many commenters supporting the proposed $19 million believed, there will be more competition among a larger pool of eligible small businesses, not less.

The association recommended an alternative size standard for NAICS 541330 of $9 million (or $10 million when rounded to the nearest fixed size level). To derive this value, the association used 50 employees as a ''natural break'' in firm size for the industry, based on a cross section of its member firms. Using the average revenue per employee for the industry, 35 percent for consultants' fees and other costs (*i.e.,* ''pass throughs,'' which are discussed elsewhere in this rule), and an additional 10 percent adjustment for high cost areas, the association translated 50 employees to about $9 million in revenues. SBA has several concerns with this analysis. First, the association's total membership includes about 5,500 engineering firms, which represents less than 12 percent of total firms in NAICS 541330, based on the 2007 Economic Census. SBA is concerned that findings based on such a limited sample may not accurately represent the entire engineering services industry. Second, the comment provided no explanation regarding its use of 50 employees as a ''natural break'' of firm size as an appropriate basis of size standards for the engineering industry. Third, the association did not provide any references to the data sources it used to verify its findings.

The association identified several factors to characterize the U.S. engineering industry, namely: Staffing, marketing, management, technology, competition, mergers and acquisitions, and costs. However, it provided no information on what specific roles these

factors play in defining what constitutes a small firm in the engineering industry nor it explained why these factors would support its suggested $10 million size standard.

Further, the association questioned how the inclusion of the three ''exceptions'' for NAICS 541330 in the Economic Census data influenced SBA's results for general engineering services. As noted in the proposed rule, the data from the Census Bureau's tabulation are limited to the 6-digit NAICS industry level and hence do not provide separate data on ''exceptions.'' As such, SBA used product service codes (PSCs) for contracting activity reported in FPDS–NG to identify firms that were active in general engineering services and in the three ''exceptions.'' Using the revenue and employment data for those firms from the Central Contractor Registration (CCR), SBA analyzed industry factors for firms engaged in general engineering services and those involved in the ''exceptions.''

SBA agrees with the association's comment that the Agency should reassess the impact that the inclusion of three ''exceptions'' in the analysis might have on the calculated size standard for general engineering services. As SBA explained in the proposed rule, firms engaged in Military and Aerospace Equipment and Military Weapons and in Marine Engineering and Naval Architecture are significantly larger in size than firms engaged in other general engineering services. Consequently, the inclusion of those larger firms in the analysis for the size standard for general engineering services creates an upward bias in the estimated size standard. In the past, SBA gave considerable weight to public comments on the engineering size standard, which for various reasons, overwhelmingly supported a lower size standard than otherwise supported by the industry data. In contrast, the comments to the March 16, 2011 proposed rule revealed much broader support for a higher size standard for engineering services. Thus, SBA concurs with the comment that it should reevaluate the industry data before revising the size standard. SBA also agrees that, when deciding the size standard for general engineering services, it should exclude from the analysis, as best as it can, the larger firms that primarily provide services in those three sub-categories or ''exceptions.''

To adjust the industry-wide data for NAICS 541330 obtained from the 2007 Economic Census, SBA re-estimated the values for the industry factors. As described in the proposed rule, SBA analyzed data from CCR and FPDS–NG to evaluate size standards for the two engineering ''exceptions.'' These are the only appropriate data sets available because these sub-categories represent firms that are predominately engaged in the Federal procurement market, and as the proposed rule pointed out and as indicated above, the Economic Census data are not available at the sub-industry level (*i.e.,* below the 6-digit NAICS industry level). The analysis of those firms using the CCR and FPDS–NG data also had produced the results for all other engineering firms. However, because CCR and FPDS–NG data are limited to the Federal market, rather than using those results directly, SBA applied the differences between firms in the engineering sub-categories and those in the remaining engineering services based on the CCR/FPDS data to adjust industry factors estimated from the Economic Census data for NAICS 541330.

SBA calculated ratios for industry and Federal procurement factors between the two engineering sub-categories and all other engineering services. The ratio for average firm size and average assets size was estimated to be 66.2 percent and 87.5 percent for the weighted average. In this analysis, SBA did not consider the Gini coefficient values, because the size distributions of firms are not comparable between CCR/FPDS–NG and Economic Census data. The Federal small business share for the remaining engineering firms continues to be similar to the overall industry small business share, and as discussed in the proposed rule, is not a factor in the analysis. Using the above ratios, SBA adjusted industry factors (*i.e.,* simple average firm size, weighted average firm size, and average assets) obtained from the 2007 Economic Census for NAICS 541330. Based on those adjusted factors, SBA is adopting a $14 million size standard for NAICS 541330.

SBA's decision to adopt a $7 million size standard for architectural services and a $14 million size standard for engineering services (except for Military and Aerospace Equipment and Military Weapons and for Marine Engineering and Naval Architecture) departs from the historic use of a common size standard for these two industries. Unlike in the past, comments on a proposed common size standard for A&E differed significantly between the two industries. Specifically, almost 90 percent of the comments addressing architectural services opposed the proposed $19 million size standard, while more than 75 percent of the comments addressing engineering services supported a significant increase to the current size standard. The comments focused primarily on an appropriate size standard for their specific industries, with little discussion of the need to have a common size standard for architectural services and engineering services. Accordingly, SBA believes that the different size standards adopted for each of these two industries better reflect the structure of each industry, while providing increased Federal contracting opportunities for small businesses without requiring them to compete against what many commenters believed would have been much more competitive mid-sized firms included as small under the proposed $19 million size standard. In addition, SBA was concerned that the relatively low 15.6 percent small business share of industry receipts for engineering services under the $4.5 million size standard was out of line with the typical small business market share of other professional services industries and thus, constraining small business opportunities in Federal contracting in engineering services. The $14 million size standard will expand the number of deserving businesses that should be considered small in engineering services and increase Federal contracting opportunities for small businesses.

NAICS 541330—Engineering Services (Three ''Exceptions'')

There were 16 public submissions that specifically commented on SBA's proposal to retain the current $27 million size standard for the Military and Aerospace Equipment and Military Weapons sub-category or ''exception.'' All believed that the current $27 million size standard was too low and needed to be increased. Some comments recommended that SBA reform its current approach to size standards so that size standards are based on the average size of dominant players in the Federal market.

One commenter expressed concern with SBA's proposal to increase 36 size standards in NAICS Sector 54 but to maintain the size standard for Military and Aerospace Equipment and Military Weapons at the current $27 million level. The commenter believed that this size standard should also be increased, pursuant to the intent of Small Business Jobs Act of 2010 to help small businesses create jobs. The commenter stated that a higher size standard would expand the pool of qualified small businesses for Federal contracts. The commenter believed that the $27 million size standard does not reflect changes in the Federal contracting marketplace in military and aerospace

engineering services for aviation programs, including Naval Air Systems Command and Naval Air Warfare Center Aircraft Division (NAVAIR/NAWCAD). The commenter pointed out that small business contracts for engineering services with NAVAIR/NAWCAD totaled $95 million in 2008 and commented that leaving the size standard at $27 million would negatively impact NAVAIR's ability to meet its needs and small business goals. The commenter went on to allege that this will reduce the number of small businesses available to perform as prime contractors and as subcontractors for large prime contractors. Further, the commenter stated that some businesses that are small under the current size standard will soon lose their small business status due to contract cost escalation for multi-year task order contracts. The commenter stated that some upward adjustment to the current standard will not include small businesses that would be dominant in their fields relative to high revenue of large firms that receive contracts for engineering work. In the view of the commenter, upward adjustment to the current size standard would enable small businesses to compete for larger contracts. The commenter stated that contracts for military and aerospace engineering tend to be large relative to the current $27 million size standard. The commenter recommended that SBA also consider the critical nature of military and aerospace engineering services in war efforts as an additional factor in its methodology. Upon graduation, the commenter stated, small businesses are forced either to compete with large industry leaders for military and aerospace engineering contracts on an unrestricted basis or elect to be acquired by large businesses. The current size standard should be adjusted to $30 million to account for inflation and higher labor and operating costs in some regions.

Six commenters noted that dominant firms in the Federal market for military and aerospace equipment and military weapons average $25 billion in annual revenues compared to the $27 million size standard.

Two commenters on ''Military and Aerospace Equipment and Military Weapons'' size standard believed that mid-sized firms are too large to qualify under SBA's current standards and too small to compete with large businesses in the Federal market. Successful companies that outgrow size standards are forced to compete with businesses that are many times larger than they are. The commenters noted that mid-sized firms have seen their share in the federal market decline from 40 percent in 1995 to 30 percent in 2009, while the large business share increased from 41 percent to 48 percent in the same period. As conduit for innovation, robust mid-tier companies are desirable for the Federal marketplace, they contended.

Two commenters stated that the majority of contracts for Military and Aerospace Equipment and Military Weapons are so large that companies with $27 million in revenue cannot meet their requirements. They also noted that the Federal government is moving from the single award vehicle to much larger and more complex multiple award contract (MAC) vehicles, making it harder for even mid-sized companies to compete in the Federal market.

Several commenters recommended a substantial increase to the current $27 million size standard for Military and Aerospace Equipment and Military Weapons. They contended that a higher size standard would enable small businesses in this sub-category to grow and be able to compete with the largest businesses for Federal contracts in full and open competition, successfully transition from small to mid-sized businesses, meet size and other requirements for Federal contracts, and retain or regain their small business eligibility for Federal assistance.

SBA generally agrees with the above comments. However, the commenters did not provide data or data sources to support their positions. SBA is aware that there are very large companies in the Federal market for Military and Aerospace Equipment and Military Weapons. However, SBA's analysis of FPDS–NG data indicates that many small and ''mid-sized'' firms have grown and been successful in this arena.

SBA agrees that the size standard for the two engineering ''exceptions'' (Military and Aerospace Equipment and Military Weapons, and Marine Engineering and Naval Architecture) should be increased, and as such, SBA is adopting a size standard of $35.5 million. The comments above raised two main issues that, when assessed along with SBA's analysis in the proposed rule, support a higher size standard. First, Federal contracts for these types of engineering services tend to be extremely large and beyond the capabilities of small businesses under the current size standards. Under the current standards, small businesses obtained a relatively small proportion of Federal contracts (11.2 percent for Military and Aerospace Equipment and Military Weapons, and 3.6 percent for Marine Engineering and Naval Architecture). Larger size standards for Military and Aerospace Equipment and Military Weapons and for Marine Engineering and Naval Architecture will provide opportunities for contracting officers to structure contracts within the capabilities of small businesses. Second, small businesses that outgrow the size standard must compete against extremely large businesses for Federal contracts. The graduated small businesses have not developed sufficiently to compete with those large businesses, which are the Federal government's largest contractors as well as among the largest companies in the U.S.

Industry data from the Economic Census do not fully capture the structure of the sub-industries comprising the above exceptions. While SBA's analyses of the average firm size and average assets size support the points made by the comments, the Gini coefficient and Federal contracting factors point to inconsistent assessments of the industry data and the Federal market as characterized by the comments. The Gini coefficient indicates a $5 million size standard while all the other industry factors support a $35.5 million size standard. The low Gini coefficients may have resulted from an unusually skewed firm size distribution that is unsuitable for the size standard analysis. While the firms are extremely large in size, the Gini coefficient is low perhaps because of the presence of about a dozen extremely large firms, resulting in a more even firm distribution than generally exists when only a few extremely large firms obtain a large market share of the industry. Thus, SBA did not apply the Gini coefficient in its final analysis. The remaining industry factors all support a $35.5 million size standard for both exceptions.

As discussed in the proposed rule, the Federal contracting factor did not support an increase in the current size standard for these two exceptions. However, the comments above raised valid concerns regarding the availability of Federal contracting opportunities for small businesses. Although the small business Federal market share does not differ significantly from the small business share of overall revenue for these sub-categories, SBA is concerned that the small business Federal contract share for these sub-categories is relatively low as compared to other professional services industries.

As required by law, SBA is also adopting the $35.5 million size standard for the third ''exception'' to NAICS 541330 (Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992).

Section 3021(b)(1) of Public Law 102–486, the National Energy Policy Act of 1992 (106 Stat. 2776, 3133) states that ''for purposes of contracts and subcontracts requiring engineering services (awarded under this Act) the applicable size standard shall be that established for Military and Aerospace Equipment and Military Weapons.''

NAICS 541360—Geophysical Surveying and Mapping Services; and NAICS 541370—Surveying and Mapping (Except Geophysical) Services

SBA received 22 comments on NAICS 541360 (Geophysical Surveying and Mapping Services) and 38 comments on NAICS 541370 (Surveying and Mapping (except Geophysical) Services). Almost all commenters supported SBA's proposal to increase the current $4.5 million size standard. The vast majority (87 percent) fully supported SBA's proposal to increase it to $19 million, and the remainder supported a more moderate increase.

An association representing private sector firms in the geospatial (remote sensing and geographic information systems) market supported SBA's proposed $19 million size standard for NAICS 541370 (Surveying and Mapping (except Geophysical) Services). The association commented that the current size standard of $4.5 million fails to meet the needs of Federal agencies and private geospatial firms, thereby restricting small business set-asides and small business participation at the prime contractor and subcontractor level. The commenter noted that this has caused some Federal agencies to select other NAICS codes with higher size standards for surveying and mapping work. The comment also indicated that few firms at $4.5 million in annual revenue can make the capital investments necessary to perform Federal contracts involving surveying, mapping, and geospatial services. The commenter added that the participation of some of the largest corporations in the geospatial market has rendered small businesses at the current $4.5 million size standard unable to compete in the Federal market.

SBA is adopting a $14 million size standard for both NAICS 541360 and NAICS 541370. As discussed elsewhere in this rule, the Agency had proposed $19 million as a common size standard for all industries in NAICS Industry Group 5413 (Architectural, Engineering and Related Services) but has decided not to apply a common size standard for this industry group. Rather, SBA agrees with many of the comments that a common size standard is not appropriate for the entire industry group. SBA has therefore assessed the comments received on the individual industries and reexamined the specific industry data for these industries.

The decision to adopt a $14 million size standard for the two surveying and mapping industries is based on several considerations. First, public comments overwhelmingly supported increasing the current $4.5 million size standard to the significantly higher proposed level of $19 million. Commenters contended that the higher size standard would enable firms in these industries to grow and develop to a size at which they could compete against larger businesses, while retaining or regaining their small business status. Second, historically, the size standards for these two industries have been the same as the size standards for architectural and engineering services. In this rule, SBA is adopting a $7 million size standard for NAICS 541310 (Architectural Services) and NAICS 541320 (Landscape Architectural Services), and a $14 million size standard for NAICS 541330 (Engineering Services). SBA believes it should continue to maintain similar or comparable size standards among the surveying and mapping industries and the architectural and engineering service industries. Thus, although the industry data point to a size standard higher than $14 million for NAICS 541360 and lower than $14 million for NAICS 541370, SBA believes a common size standard of $14 million is more appropriate than establishing two very different size standards for the two very similar types of industries, because (1) it represents a significant increase to the current size standard, as the commenters desired and (2) it maintains the historical common size standard between mapping and surveying services and architecture and engineering services.

Furthermore, comments provided by a mapping industry association cited the expanding role of geospatial activities in NAICS 541370 and recommended a much higher size standard than supported by the Economic Census industry data. Many of the firms in NAICS 541370 are engaged in conventional land surveying, and such firms are significantly different in many respects from those involved in geospatial services. The most important distinction is that firms engaged in geospatial services have much higher capital expenses for equipment such as aircraft, precision aerial cameras, analytical or softcopy stereoplotters, and specialized computer peripheral equipment. The staff required to operate these types of equipment and process the information have a very different and much more expensive skill set than that which is required for other, more traditional, surveying activities. Importantly, firms primarily engaged in geospatial services are now competing against many of the largest firms obtaining Federal contracts in this area. Additionally, the Federal market for geospatial services consists of multiyear, multimillion dollar contracts. SBA agrees with the association's comment that Economic Census data do not reflect these developments in the Federal market for geospatial services.

SBA also evaluated data from FPDS–NG and CCR. In terms of total contract dollars, NAICS 541370 represented a significantly larger share of the Federal market than did NAICS 541360. In addition, Federal contracts tend to be larger for NAICS 541370 than for NAICS 541360. In contrast to Economic Census data, values for industry factors based on revenue data on firms that participate in Federal market for surveying and mapping services were also much higher for NAICS 541370 than for NAICS 541360.

The association stated that some of its members were concerned that increasing the NAICS 541370 size standard to $19 million may result in Federal agencies' overreliance on small business set-asides, thereby causing disadvantage to mid-sized firms that are principally engaged in geospatial activities. SBA anticipates some redistributions of contracts from mid-sized firms to newly defined small businesses under the $14 million size standard; however it does not anticipate that impact to be significant. The $14 million size standard, instead of the proposed $19 million, should mitigate some of their concerns.

In view of these considerations, SBA believes a $14 million size standard is appropriate for both NAICS 541360 and for NAICS 541370.

NAICS 541340—Drafting Services; and NAICS 541350—Building Inspection Services

SBA received four comments on NAICS 541340 (Drafting Services) and two comments on NAICS 541350 (Building Inspection Services). To maintain the common size standards for all industries within NAICS Industry Group 5413, SBA had proposed a $19 million size standard for both of these industries, although the data for the individual industries supported much lower size standards for them. Nearly all comments supported SBA's proposal to increase the current $7 million size standard to $19 million.

In light of SBA's decision not to adopt the proposed $19 million common size

standard for NAICS 5413, which was based on public comments and significant differences in estimated size standards among individual industries, SBA reevaluated the size standards for NAICS 541340 for NAICS 541350. To do so, SBA analyzed updated industry data from the 2007 Economic Census and Federal contracting data from FPDS–NG. The updated analysis supported lowering the size standard to $5 million for both industries. However, given SBA's decision not to lower any size standards, SBA is adopting the current $7 million size standard for NAICS 541340 for NAICS 541350.

SBA received no comment or concern regarding its proposal to eliminate Map Drafting as an exception to NAICS 541340. The exception for this activity was created in support of the CompDemo Program, which the Jobs Act of 2010 repealed. Therefore, SBA is removing the exception for Map Drafting from NAICS 541340.

NAICS 541380—Testing Laboratories

SBA received 10 comments on NAICS 541380 (Testing Laboratories). Seven comments fully supported SBA's proposed $19 million size standard, while three comments opposed it in support of retaining the current $12 million size standard.

One commenter who strongly supported SBA's proposal to increase the size standard also supported the common size standard proposed for all industries within NAICS Industry Group 5413. The commenter mentioned that a common size standard would ease contracting officers' burden of selecting the perfect NAICS codes for government contracts and reduce the likelihood of NAICS code appeals. Citing growing consolidation in the industry, the commenter stated that the current $12 million size standard for NAICS 541380 should not be lowered based on industry-specific analysis, in the event that SBA does not adopt the $19 million common size standard. The commenter pointed out that the effect of losing small business status would be immediate and devastating to its company and other similar small businesses because lowering size standards would force small businesses to cut hours and salaries and lay off employees to survive. For the same reasons, the commenter also agreed with SBA's decision not to lower any size standards under current economic conditions.

Given SBA's decision not to adopt the proposed $19 million common size standard for NAICS 5413 (discussed elsewhere in this rule), SBA reevaluated the size standard for NAICS 541380. The initial industry specific analysis supported a size standard of $10 million, which is lower than the current size standard of $12 million. For reasons explained in the proposed rule, SBA proposed to retain the current size standard where analyses supported lowering them. In this final rule, to be consistent with the use of eight fixed levels, instead of the current $12 million size standard, SBA is adopting a size standard of $14 million, which is the nearest fixed size level. The updated Economic Census tabulation also supported a $14 million size standard for this industry.

NAICS Industry Group 5414—Specialized Design Services

For the reasons explained in the proposed rule, SBA proposed to retain the current $7 million size standard for all industries in NAICS Industry Group 5414 (Specialized Design Services), even if the industry data supported a lower $5 million size standard. In response, SBA received 11 comments, with about half supporting the current $7 million size standard and half opposing it. None of the comments expressed major concerns. Therefore, SBA is adopting the current $7 million size standard for all industries within NAICS Industry Group 5414.

NAICS Industry Group 5415—Information Technology Services; and NAICS 811212—Computer and Office Machine Repair and Maintenance

SBA received about 25 comments on NAICS 5415 (Information Technology Services) and NAICS 811212 (Computer and Office Machine Repair and Maintenance) at the 6-digit level. The majority recommended that the current size standard be higher than the $25.5 million size standard that SBA proposed for these industries. Commenters recommended alternative size standards varying from $30 million to $35.5 million, with an average of $30 million. A few commenters fully supported the proposed $25.5 million size standard. Additionally, SBA received 34 comments for NAICS 5415 at the 4-digit level, many of which recommended either an employee based size standard or total reform of SBA's current size standards to expand Federal contracting opportunities for mid-sized companies. A few commenters recommended a size standard higher than the proposed $25.5 million size standard to account for inflation since SBA's last inflation adjustment.

An association representing 350 companies involved in a variety of professional services commented on SBA's proposed $25.5 million common size standard for NAICS Industry Group 5415 and NAICS 811212. It also commented, as discussed elsewhere in this rule, on some of the factors and analyses that SBA used to develop the proposed size standards. It also expressed concerns for the SBA's proposal to increase the size standard for the Architectural and Engineering (A&E) services from $4.5 million to $19 million, while it proposed to increase the size standard for computer related services only by $0.5 million to $25.5 million.

The association strongly supported SBA's effort to review size standards in view of changes in the professional services industry since the last overall review. That was several decades ago and there have been significant changes in the Federal marketplace for professional services, especially the rapid growth in Federal spending on professional services in recent years. The association noted that SBA proposed increases to 36 size standards in NAICS Sector 54 will provide much needed flexibility for small businesses to grow, while still having access to Federal contracts on an unrestricted basis. The association believed that proposed increases are not too substantial to squeeze very small businesses out of the ability to compete for Federal contracting opportunities. The association questioned the rationale for a dramatic increase in the size standard for engineering and architectural services from $4.5 million to $19 million, in contrast to the increase of just $0.5 million in the size standard for computer related services, despite significant changes in Federal market for those services.

SBA's proposal to increase the A&E size standard to $19 million was based on the evaluation of industry and Federal procurement factors for the entire A&E group given the commonalities and overlap among firms in the A&E commercial and Federal marketplace. Another rationale was to maintain the use of common size standard for the group, as supported by the industry's comment on SBA's 1998 proposed rule to revise size standards for the architectural, engineering and surveying industries. In addition, SBA believes that it is misleading to compare $4.5 million with $19 million without considerations of the results from the industry data. If SBA had adopted the proposed $7.5 million size standard for the A&E industry in 1999, with inflation adjustment the size standard would be about $10 million today and the proposed increase to $19 million would not be as dramatic as it seems. In response to industry's comments, SBA

adopted a much lower $4 million size standard in the final rule.

SBA's analyses did not support a higher increase to the size standard for four of five computer related services, possibly indicating that the current $25 million size standard is already adequate. Under the current size standards, based on the 2007 Economic Census, the small business share of total industry revenue was 35 percent for computer related services (NAICS 5415 and NAICS 811212) versus 22 percent for A&E and Related Services (NAICS Industry Group 5413). Similarly, based on the FY 2008–2010 data, the small business share in the Federal market was 36 percent for computer related services, as compared to 16 percent for A&E services. These data clearly support the need for a much higher increase to the current size standard for the A&E group than for computer related services.

The association expressed its concerns about SBA's proposal to use a $25.5 million common size standard for all Computer Systems Design and Related Services Industries (NAICS Industry Group 5415 and NAICS 811212), when SBA's industry specific analysis supported a much higher $35.5 million size standard for NAICS 541513. It stated that by doing so, SBA has eliminated legitimate small businesses in that NAICS code from being able to qualify. It pointed out that this also applies to some architectural and engineering services industries. The association recommended that, when proposing a common size standard for a group of industries, SBA either adopt the highest calculated size standard for any NAICS code as the common size standard for the entire group, or adopt the size standard based on its analysis of individual NAICS codes. However, the commenter agreed with SBA's proposal not to lower any size standards, and recommended that no size standards be lowered when SBA decides not to adopt the common size standard. When establishing a common size standard, SBA evaluates the results for both individual industries and for the group as a whole, commonalities, and overlap among the industries in the group, historical practice, industry's input, and the impact of using separate industry specific size standards for closely related industries in the Federal market, when a common size standard may be more appropriate.

SBA has not adopted the association's recommendation. SBA has used a common size standard for all Computer Systems Design and Related Services since 1992 and received no concerns about the common size standard. Based on SBA's industry specific analysis using the 2007 Economic Census data, only about 20–30 firms in NAICS 541513 would be impacted by using the $25.5 million common size standard instead of $35.5 million. Meanwhile, if $35.5 million were used as the common size standard for the entire group, as suggested by the association, more than 300 otherwise large firms would qualify as small in other NAICS codes, possibly hurting many other legitimate small businesses in those industries. If SBA were not to create a common size standard it might give contracting officers an incentive to select NAICS 541513 because of its higher size standard, instead of another more appropriate NAICS code in the group. Many firms operating in NAICS 541513 also operate in other industries, such as NAICS 541511 and 541519, and will benefit from SBA's decision not to lower size standards for those industries based on industry specific analyses. Regarding the association's similar concern for the common size standard for the A&E industry group, as discussed elsewhere in this rule, SBA has, based on the comments and additional analysis, modified its proposed common size standard for that industry group.

One commenter believed that size standards for computer related services must be large enough to enable small businesses to grow and become competitive against large businesses that dominate ''full and open'' competition in the Federal market. It suggested that SBA raise the size standards for NAICS Industry Group 5415 to at least $35.5 million. It contended that SBA does not take into account the competition of mid-sized businesses with significantly larger Federal contractors. The commenter noted that once small businesses outgrow size standards after being moderately successful in the Federal market, they lack the resources, in terms of capital, staff, and infrastructure, to compete successfully with their significantly larger counterparts. SBA recognizes the challenges many mid-sized businesses face in the Federal market when they outgrow a size standard, but SBA is also very concerned that ''smaller'' small businesses may not be able to compete effectively with ''larger'' small businesses for Federal small business contracts if size standards are too large. SBA does not agree with the comment that it does not account for industry competition when establishing size standards. The Agency evaluated the four-firm concentration and size distribution of firms to account for completion within the industry.

The commenter recommended that the size standard for all industries in NAICS 5415 be increased to $35.5 million, based on the argument that a business concern at that revenue level is ''not dominant in its field of operation.'' SBA does not adopt this recommendation for three reasons. First, the requirement of the Small Business Act that a small business not be dominant in its field of operation does not mean that SBA should define all ''non-dominant'' firms as small. Rather, it means that a business concern defined as small may not be dominant in its field of operation. In other words, all dominant firms are necessarily other than small, but all non-dominant firms are not necessarily small. Second, using non-dominance as a basis of size standards could result in very large size standards for some industries, resulting in a significant competitive disadvantage to businesses that are more representative of what constitute small business concerns. Third, SBA's analyses of relevant data do not support the $35.5 million size standard for all industries within NAICS Industry Group 5415, either individually or as a group. In fact, the industry specific results would support size standards of $14 million and $19 million for NAICS 541511 and NAICS 541519, respectively, which are lower than the current $25 million.

In response to comments, SBA reevaluated industry and Federal procurement data for industries in NAICS Industry Group 5415. Based on this reevaluation, the data do not support higher than the proposed $25.5 million size standard. In fact, as stated below, when these industries are analyzed individually, the data supports lowering size standards for some of them. However, SBA is not lowering any size standards for the reasons given in the proposed rule. In addition, under the current $25 million size standard, small businesses in these industries seem to be doing relatively well, receiving 36 percent of total Federal contract dollars during fiscal years 2008 to 2010, as compared to 35 percent of total industry receipts.

One commenter supported SBA's effort to review all size standards and its size standards methodology. However, the commenter recommended that SBA evaluate inflation as an additional factor when reviewing size standards. Specifically, the commenter suggested that the proposed size standard based on five primary factors be adjusted for inflation since SBA's last adjustment and recommended a $30 million size standard for firms in NAICS 5415. Otherwise, the commenter stated, small

businesses on the brink of exceeding the current size standard will soon be forced to compete with much larger firms.

SBA is required to review all size standards not less frequently than every five years. Accordingly, the latest inflation adjustment for all receipts based size standards, including those in NAICS 5415, was completed in July 2008. In this comprehensive size standards review, SBA's revisions to size standards are primarily based on the Agency's evaluation of industry and Federal procurement factors. SBA plans to adjust all monetary size standards together for inflation after it completes its review of all receipts based size standards. SBA is reviewing size standards on a Sector by Sector basis, and this can take several years to complete all of them. If SBA were to make additional adjustments for inflation on a Sector by Sector basis, the result would be inconsistent size standards across industries.

A few commenters recommended an employee based size standard for NAICS Industry Group 5415, and their suggested employee based standards varied from 500 employees to 1,500 employees. Based on the 2007 Economic Census data, if the size standard was set at 500 employees, 99.2 percent of businesses in NAICS Industry Group 5415 would qualify as small, and at 1,500 employees, 99.5 percent would qualify as small. Meanwhile, more than 92 percent of firms in this industry group have fewer than 20 employees. Based on the industry data from the 2007 Economic Census, a 500-employee size standard would translate to annual revenue of approximately $45 million and a 1,500-employee size standard would translate to nearly $70 million. SBA believes that such a large size standard would render many truly small businesses unable to compete with large small businesses for Federal opportunities. Currently, no SBA's receipts based size standard is higher than $35.5 million.

For the above reasons, SBA is adopting the proposed $25.5 million size standard for all industries within NAICS 5415 and NAICS 811212.

NAICS Industry Group 5416—Management, Scientific and Technical Consulting Services

SBA received more than 100 comments for this industry group, with about one-fifth of them limited to the 4-digit level. The vast majority (73 percent) fully supported SBA's proposal to increase the size standard for all industries within NAICS Industry Group 5416 from the current size standard of $7 million to $14 million; 7 percent recommended a smaller increase; 13 percent opposed the increase, mostly in support of the current size standard; and the rest took other positions.

Many commenters supporting the proposed $14 million the size standard for NAICS Industry Group 5416 stated that the higher size standard will enable small businesses to develop and grow to be able to compete against large businesses for Federal contracting opportunities, meet requirements for Federal contracts, and retain or regain small business size status.

One commenter, who fully supported SBA's proposal to establish a $14 million common size standard for all industries within NAICS 5416, noted that firms in this industry group provide a variety of services in multiple NAICS codes, rather than operating solely in one. The commenter indicated that a common size standard would ease contracting officers' burden of selecting the perfect NAICS codes for closely related industries and reduce the likelihood NAICS code appeals. The commenter stated that SBA's proposed rule reaches an appropriate balance of ensuring that small business set-aside contracts continue to be awarded to small businesses, while recognizing the need that existing size standards in NAICS Sector 54 need to be revised to reflect current economic and market conditions.

One commenter recommended that no size standards in the industry group be decreased if SBA does not adopt the $14 million common size standard in the final rule. The commenter believed that decreasing the size standards would have significant impacts on small businesses and the economy as a whole. SBA agrees.

Of those who opposed the proposed $14 million size standard for NAICS 5416, several believed that currently small businesses will face increased competition with newly defined small businesses under the higher size standard. A few also contended that the $14 million size standard does not reflect what is truly small. However, these commenters did not provide specific data to support their arguments. Thus, based on the comments received on the proposed rule and its analyses of relevant industry data and other relevant factors, SBA is adopting the proposed $14 million common size standard for all industries within NAICS Industry Group 5416.

NAICS 541720—Research and Development in the Social Sciences and Humanities

SBA received six comments for the NAICS 5417 Industry Group, but none were related to NAICS 541720 (Research and Development in the Social Sciences and Humanities). Thus, SBA is adopting its proposal to increase the size standard for this industry from the current $7 million to $19 million.

NAICS Industry Group 5418—Advertising and Related Services

SBA received just one comment for NAICS Industry Group 5418 (Advertising and Related Services), which fully supported SBA's proposal to increase the size standard for all industries in this industry group from $7 million to $14 million. Since there were no major concerns against the SBA's proposed increase, SBA is adopting its proposal.

NAICS Industry Group 5419—Other Professional, Scientific and Technical Services

Based on the evaluation of industry and Federal procurement factors for all of NAICS Industry Group 5419, and in the interest of maintaining the common size standard that is currently in place for most industries in this industry group, SBA proposed a $7 million common size standard for NAICS Industry Group 5419. SBA received only eight comments on NAICS 5419, of which six supported the increase, one opposed, and one took other position. Two comments supporting the increase also suggested alternative size standards for industries NAICS 541910 and NAICS 541990. SBA generally agrees with these comments, as discussed below.

NAICS 541910—Marketing Research and Public Opinion Polling

One comment supporting SBA's proposal to increase the size standard for NAICS Industry Group 5416 opposed the creation of a common size standard for NAICS Industry Group 5419, because this is a ''catch all'' industry group and various industries therein are entirely unrelated. SBA agrees. A reevaluation of the FPDS–NG and CCR data showed that industries within NAICS Industry Group 5419 are distinct and generally unrelated. In addition, the data show that a large number of firms operating under NAICS 541910 also offer services within NAICS Industry Groups 5416 and 5418. Given the results of the industry specific analysis, the evaluation of the FPDS and CCR data, and the analysis of the comments from the industry, SBA is increasing the size standard for NAICS

541910 from the current $7 million to $14 million in average annual revenue. As discussed above, SBA is also adopting the $14 million size standard for all industries within NAICS Industry Groups 5416 and 5418.

NAICS 541990—All Other Professional, Scientific, and Technical Services

One commenter opposed keeping the size standard of NAICS 541990 at the current $7 million level, arguing that this industry is also a ''catch all'' of other industries under NAICS 5419 (which is already a ''catch all'' industry group, as discussed previously) as well as all other industries under NAICS Sector 54 as a whole. The commenter recommended a higher $19 million size standard for weather forecasting services, which is part of NAICS 541990. The commenter noted that the size and scope of Federal contracts involving weather forecasting are beyond the capabilities of firms under the current $7 million size standard. SBA partially agrees with this comment. Although the analysis of the primary factors suggested a size standard of $7 million, a reevaluation of the FPDS–NG and CCR data showed that the characteristics of businesses in the Federal market within NAICS 541990 are not captured well by the Economic Census data. The FPDS–NG data showed an average of nearly 10 billion dollars awarded annually to this industry and a small business share of about nine percent. In contrast, the analysis of the Economic Census data showed that small businesses account for 65 percent of the total industry receipts. However, the total Federal contracting dollars reported in FPDS–NG over the past several fiscal years has exceeded total industry receipts, suggesting that Economic Census does not adequately represent the Federal market for NAICS 541990. Also, the mix of services included in Federal contracts under NAICS 541990 tend to be much more technical and scientific in nature than the mix of services provided under other industries within NAICS Industry Group 5419. As expected, the FPDS–NG and CCR data showed that a large number of businesses operating under NAICS 541990 also offer services in several other industries within the NAICS Industry Groups 5416, 5418 and 5413, indicating the related types of services among these industries. Given these results, SBA has given more weight to the Federal procurement data factor in the final analysis and increased the size standard for NAICS 541990 from the current $7 million to $14 million in average annual receipts.

Summary of Comments on Other Issues

Calculation of Receipts and the Exclusion of ''Pass Throughs''

SBA received about 30 comments regarding subcontracting costs (termed as ''pass throughs'' in the comments), particularly among comments on NAICS 541310 (Architectural Services), NAICS 541320 (Landscape Architectural Services), and NAICS 541330 (Engineering Services). These commenters believe that ''pass throughs'' account for a large percentage of their revenues (suggested figures varied from 15 percent to as much as 60 percent, but most fell within the 30–40 percent range). Commenters suggested that SBA modify its definition of receipts to allow businesses to exclude from the calculation of revenues the amounts paid to subcontractors and suppliers in the course of doing their business. Some commented that instead of increasing the size standards, SBA should allow businesses to exclude ''pass throughs'' from their revenues, while a few others suggested an employee based size standard to address this issue (which has been addressed elsewhere in the rule).

This is not a new suggestion, nor is it unique to these industries. SBA's definition of receipts states the following: ''Receipts means '*total income*' (or in the case of a sole proprietorship, 'gross income') *plus 'cost of goods sold'* as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms * * *.'' 13 CFR 121.104 [emphasis added]. The definition of receipts provides for a number of exclusions (discussed below), none of which correspond to subcontracting, materials, or related costs. SBA recognizes that subcontracting and material costs can be more substantial for some types of businesses and industries than for others. The Economic Census data that SBA uses in its size standards analysis include all revenues received by companies, including the values of their subcontracts. If the Agency excluded the value of ''pass throughs'' revenues from the calculation of receipts, SBA would also have to establish a lower size standard to reflect the size of the industry without them.

Except for a few industries, SBA has always included all revenues in its calculation of receipts—first, because Economic Census data includes them, as stated above, and second, because SBA's existing definitions of receipts and employees provide a consistent approach to establishing eligibility for small business programs for all industries. If SBA were to exclude certain costs for one or a few industries, other industries could raise the same questions. This would create a ''slippery slope'' leading toward widespread inconsistency in how businesses calculate their receipts to determine if they are small. The better solution would be to have higher size standards than otherwise supported by industry and Federal procurement factors for industries with high ''pass throughs,'' so that the size standards reflect the realities of how such firms conduct their business. In fact, a number of commenters cited high ''pass throughs'' as one of their reasons for supporting SBA's proposed increases to size standards for architectural and engineering services. Again, SBA's current definition of receipts is consistent with how businesses report their revenues for the Economic Census. The current definition is also consistent with the Small Business Act, which provides that size standards are to be established based on ''* * * annual average *gross receipts* of the business concern * * *'' (15 U.S.C. 632(a)(2)(C)(ii)(II) [emphasis added]).

SBA's definition of ''receipts,'' cited above, goes on to provide for the following exclusions from the calculation: ''Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts.'' 13 CFR 121.104(a). The following is a discussion of these exclusions:

1. ''Net capital gains'' are extraordinary income, and for a given company, their inclusion in the calculation of annual receipts could substantially alter its fiscal picture. A business uses its annual receipts averaged over its last three fiscal years to determine if it is small, and extraordinary income can substantially distort that calculation.

2. ''Proceeds from transactions between a concern and its domestic or

foreign affiliates'' would be counted two or more times, if included, because a company must include the receipts of its affiliates as well. 13 CFR 121.103(a)(6).

3. The other exclusions refer to *amounts that certain types of businesses receive but to which they never have a right.* That is, they collect money for others, hold the funds in trust, and disburse them on behalf of the party for whom they hold them. *The funds do not increase their asset base and can never be used to reduce their liabilities.* In other words, the funds are never the property of the company that receives them. They may receive commissions and/or fee for their services, which are their revenue, but the funds themselves are not.

4. ''All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts'' refers to the costs of doing business for firms that do not operate in industries where the above-named exclusions apply. For example, if a firm subcontracts work to others and/or purchases material in the course of its business dealings, it incurs liabilities. Payments received as a prime contractor, or from another prime contractor, to cover any of those usual and customary costs of doing business, constitute revenue, and the company cannot exclude them when it calculates its receipts.

In the same vein, SBA notes that a number of public submissions indicated that subcontracting costs can be very substantial in their industries. It is important to point out that, under SBA's regulations on Government Contracting Programs (13 CFR 125), ''In order to be awarded a full or partial small business set-aside contract, an 8(a) contract, a WOSB or EDWOSB contract pursuant to part 127 of this chapter, or an unrestricted procurement where a concern has claimed a 10 percent small disadvantaged business (SDB) price evaluation preference, a small business concern must agree that: (1) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. * * *'' 13 CFR 125.6(a). A firm undertaking such contracts must comply with these ''limitations on subcontracting,'' even if it otherwise appears to meet the small business size standard for the procurement. It cannot qualify as small for award under any of the aforementioned programs if it subcontracts more than 50 percent of the contract.

Mid-Size Businesses

A number of comments advocated for SBA to significantly increase the size standards to enable formerly small businesses (termed as ''mid-sized'' businesses) to obtain Federal contracts. These comments related the difficulties experienced by former small businesses that have outgrown the size standards in their industries in obtaining Federal contractors as ''mid-sized'' businesses. The comments explained that such businesses are too large to qualify for small business set-asides and yet too small to compete successfully on a full and open basis against the largest businesses in their industries. They cited a study by the Center for International and Strategic Studies, *Structure and Dynamics of the U.S. Federal Professional Services Industrial Base 1995–2009,* which found that the market share of Federal contracts for professional services of mid-sized businesses had declined during the 1995–2009 period, while the large business share had increased. The study also found that the small business Federal professional services market share had essentially remained stable. In general, commenters contended that the formerly small businesses have not developed to a size where they possess the resources and capabilities to compete effectively against the largest businesses in their fields that have billions of dollars in revenue and thousands of employees. In addition, commenters contended that Federal contracting requirements and trends, especially contract bundling, make it difficult for mid-size companies to compete. These comments recommended a number of changes to address the problem of formerly small businesses. The discussion below provides descriptions of these recommendations, along with SBA's responses.

1. *Include as small businesses those which are not dominant in their field of operation, in accordance with the Section 3(a)(1) of the Small Business Act. For example, consider the average size of the largest businesses in an industry and determine the size standard as a percentage of that average.*

SBA does not adopt this recommendation. As described in its Size Standards Methodology and the proposed rule, in developing size standards, SBA considers various characteristics to identify the small business segment of an industry. SBA's implementation of this provision of the Small Business Act ensures that a size standard developed based on its industry analysis does not include a business that is dominant in its industry. The legislative history of the Act makes clear that a business under a size standard may not be dominant in its field and qualify as small. To do otherwise would include extremely large businesses never envisioned to be considered small.

2. *Redefine NAICS 517110 (Wired Telecommunications) to include information technology services, such as the design, development, and/or provision of software; the design, development, and/or provision of information technology systems; and IT infrastructure operations, maintenance, and security services.*

SBA does not adopt this comment. The information technology NAICS codes under NAICS Industry Group 5415 (Computer Systems Design and Related Services) are well defined and reflect the range of information technology services provided by businesses in that Industry Group that are listed in the recommendation. NAICS 517110, however, pertains to the provision of telecommunications services. Although telecommunications apply and use information technology in developing communications, that is not the nature of the services provided by businesses in NAICS 517110. If SBA were to adopt the recommendation, a 1,500-employee size standard would apply to information technology services. However, the industry data for NAICS Industry Group 5415 strongly support its proposed size standard of $25.5 million. SBA is also concerned that a 1,500-employee size standard for information technology services would harm currently defined small businesses by causing them to lose contracts to the much larger businesses under that suggested size standard.

3. *Develop a five-year pilot program for contracting officers to use number of employees to determine small business status.* The suggested tiers, based on the size of a contract, are as follows:

Tier	Number of employees	Anticipated contract value
1	1–50	$5 million.
2	51–150	$5–$50 million.
3	151–300	$51–$150 million.
4	301–500	$151–$300 million.
5	501–1,000	$301–$500 million.
6	1,001–2,000	$500 million.

Pursuant to the recommendation, businesses may compete for contracts within their size tier or a higher tier. The commenters stated that this recommendation attempts to protect the

smallest businesses and assist developing firms and to create a level playing field among competitors of a similar size.

SBA does not adopt this recommendation. The approach appears to offer Federal contracting opportunities for various small and mid-sized businesses. Under such an approach, the small business Federal procurement programs would become significantly more complex to administer. Furthermore, new small business procurement goals would need to be established for each tier to ensure that contracting officers did not structure contracts for only the largest tiers, and this in turn would create more burdensome reporting requirements than those that currently exist. Past programs that applied a tiered small business approach, such as the Very Small Business Program and the Emerging Small Business category under the CompDemo Program, were not successful and were eventually terminated.

4. *Establish separate size standards for Federal contracting.* Federal contracting imposes restrictions on business practices and operations not included in the commercial market. Because of the differences between commercial and government work, a recommendation was made for SBA to establish a separate set of size standards for Federal government procurement.

SBA does not adopt this recommendation. Federal procurement is one aspect of industry characteristics that is considered along with industry data and other relevant considerations in developing size standards. However, giving exclusive consideration to Federal procurement may produce skewed analyses that are biased in favor of more successful Federal contractors, which would reduce contracting opportunities for smaller businesses. For procurement sensitive industries, SBA will consider giving greater weight to the Federal contracting factor and possibly evaluating additional data related to Federal contracts. SBA has established separate size standards for Federal contracts of very specific types of goods and services as exceptions in certain industries.

At one point, the size standards for Federal procurements and SBA's loan programs were different. These separate size standards created confusion and complexity, and consequently, SBA adopted uniform standards for both procurement and non-procurement programs in the 1980s. SBA is also concerned that separate standards for Federal contracts, especially if they are appreciably higher than the current size standards, may cause significant disadvantage to very small businesses when they compete for Federal small business set-aside contracts.

5. *Calculate average size based on five years.* The commenter also recommended calculating average annual receipts every five years, instead of every three. The commenter alleged that this would allow small businesses to plan and increase capacity before entering full and open competition and provide longer transition time from small business status to non-small business status. In addition, small businesses with large temporary increases in revenues would not lose small business status.

SBA does not adopt this comment. For receipts based size standards, calculating size over a period of time ameliorates fluctuations in receipts due to variations in economic conditions. SBA maintains that the length of time should reasonably balance the problems of fluctuating receipts with the overall capabilities of firms that are about to exceed the size standard. The average receipts calculation has not been an issue with small businesses and is generally well accepted. Extending the averaging period to five years would allow a business to greatly exceed the size standard for one to three years and still be eligible for Federal assistance, perhaps at the expense of other smaller businesses. Such a change is more likely to benefit successful graduated small businesses by allowing them to prolong their small business status, thereby reducing opportunities for currently defined small businesses.

Tiered Size Standards

About 35 comments recommended that SBA establish some form of tiered size standards for Federal contracting. Generally, smaller firms and those opposing SBA's proposal to increase size standards recommended creating a ''micro-business'' category to help truly small businesses that are way below the size standards. Several commenters recommended a ''multi-tiered'' size standard approach based on the number of employees and/or size of Federal contracts, to expand Federal contracting opportunities for mid-sized firms and those close to exceeding the size standards, while protecting truly small businesses. Such recommendations are discussed in greater detail elsewhere in this rule. While SBA recognizes the challenges that both truly small and mid-sized businesses face in the Federal market, SBA has not adopted this recommendation in this rule for three reasons. First, as discussed elsewhere in this rule, SBA believes that tiered standards would add significant complexity to size standards, which many believe are already too complex, which would run counter to SBA's ongoing effort to simplify them. Second, in order for the tiered standards approach to work as envisioned by its proponents, small business contracting goals would need to be established at each tier to ensure that small businesses at different tiers have fair access to Federal small business contracts. Third, the Small Business Act requires SBA to establish one definition of what is a small business concern, not what is small, medium, and so forth.

Size Standards Methodology

SBA received about 70 comments regarding various aspects of the methodology it used to develop the proposed rule. Commenters generally supported SBA's methodology and its proposal to use eight fixed size levels to simplify size standards. Several commenters also supported SBA's decision not to lower any size any standards, just based on analytical results, under current economic conditions.

Some commenters believed that SBA's size standards methodology was too complicated and difficult to understand, while others questioned the rationale for using $7 million as an anchor for receipts based standards. There were a few who opposed fixed size levels and believed, because of big gaps between the two size levels, calculated size standards could be larger or smaller than otherwise.

SBA's ''Size Standard Methodology'' document provides a vast array of information on its size standards analysis from a general description of the analytical approach to rigorous mathematical expressions of the calculation of industry factors. While some portions of the document are of somewhat technical nature, the general description should be sufficient for the public to understand clearly the various factors and data sources SBA uses when reviewing a size standard. SBA's methodology document describes the basis for the $7 million anchor for all receipts based size standards. The use of an anchor size standard serves an important function by ensuring that the characteristics of all industries are consistently evaluated relative to the same baseline level. As the methodology document states, the anchor size standard concept has been in place for many years with widespread general acceptance. Additionally, the $7 million anchor has been used as the appropriate size standard for a majority of the

industries that have receipts based size standards.

The fixed size standard levels were developed in response to concern from SBA and the public regarding the need to simplify size standards where possible. Because of the large number of industries and the great variation therein, a number of different size standards needed to be established. There were 31 different levels of receipts based size standards at the start of the current comprehensive size standards review, which SBA believes are both unnecessary and difficult to justify analytically. Thus, SBA has implemented the fixed size standards approach, and it welcomes comments on whether more or fewer size standard levels are more appropriate.

Several comments suggested an employee based size standard instead of a receipts based standard, arguing that number of employees is a better measure of business size for professional services industries, especially when high ''pass throughs'' are involved, and that receipts are much more sensitive to business cycles, costs of materials, and inflation in the economy. SBA disagrees. For industries where subcontracting is widespread, such as many professional services industries, SBA is concerned that an employee based size standard may encourage businesses to excessively outsource Federal work to other businesses to remain within the size standard. Under the receipts based standard, businesses are not allowed to deduct value of work outsourced. SBA will periodically review all industries not less frequently than every five years.

Some commenters recommended establishing size standards based on the average size of dominant firms in the industry, arguing that SBA's current methodology results in size standards that force mid-sized firms to compete with significantly larger firms in the Federal market. In developing a size standard, SBA considers various characteristics to identify the small business segment of an industry. The Small Business Act provides that a business concern defined as small cannot be dominant in its industry. SBA has implemented this provision of the Small Business Act by ensuring that a size standard based on its industry analysis does not include a business that is dominant in its industry.

A few questioned the methodology on the ground that calculated size standards are generally much higher than average firm size. A few expressed concerns regarding the use of simple average, instead of median, and averaging size standards over different factors. The purpose of evaluating a statistic such as average firm size is to describe quantitatively the structure of an industry. For example, is the industry comprised of many small or large firms or are most industry receipts obtained by many small firms or only a few large firms? Since no single statistic or factor can adequately describe industry structure, SBA evaluates several statistics or factors to best obtain a full representation of industry structure. Whichever statistics or factors are used, the key is to compare different industries in a consistent manner. Thus, average firm size and other industry factors are appropriate to compare how different industries are from one another. In addition, in most cases, equating the size standard to the average or median firm size in an industry can result in an unacceptably low size standard that may not adequately capture the small business segment in an industry that small business programs are intended to assist. Thus, for most industries, size standards are generally higher than the simple average or median firm size so that small businesses are able to grow and develop to an economically viable size while remaining eligible for Federal assistance. If size standards are too low, small businesses will quickly outgrow the size standards and be forced to compete with significantly larger businesses for Federal contracts on a full and open basis. SBA is equally concerned about setting size standards too high, as doing so could put smaller businesses at a disadvantage in competing for Federal opportunities.

A few commenters, including a trade association for professional services, recommended giving greater weight to the Federal contracting factor. Federal procurement is one of the factors SBA evaluates, along with industry data and other relevant considerations, when reviewing a size standard. When these factors are applied to size standards, a certain degree of additional consideration is appropriate. As discussed elsewhere in this rule, giving an excessive weight to Federal procurement (or some other factor for that matter) may produce skewed results with unintended adverse impact on small businesses. For procurement sensitive industries, SBA will consider giving greater weight to the Federal contracting factor, and possibly evaluating additional data related to Federal contracts, where appropriate. For example, SBA considers the Federal procurement factor for those industries that receive $100 million or more in total Federal contracts annually and demonstrate a large disparity between small business shares in the Federal market and the industry's total sales.

One commenter pointed out that the methodology indicated that SBA received several thousand comments on the 2004 Advance Notice of Proposed Rulemaking (ANPRM) that was proposed to simplify and restructure the size standards and that SBA held 11 public hearings throughout the country. The commenter stated that there was no resolution of many of these issues and asked if SBA resolved these issues before making the current proposed rules public—and if so, what the unresolved issues were and what SBA did to resolve them. While the 2004 ANPRM provided SBA with useful information on many size standard issues, there was not a general consensus on those issues. The major issues that SBA raised in the ANPRM are discussed in SBA's ''Size Standards Methodology'' White Paper (*q.v.,* pp. 45–48), and SBA welcomes the public's comments on any or all of these issues. Please visit *www.sba.gov/size* to access the White Paper. The public should submit its comments at *www.regulations.gov,* Docket ID SBA–2009–0008, posted October 21, 2009. SBA decided to withdraw the rule and continue its current approach and policies unless significant problems required changes to its regulations. More importantly, SBA continues to believe that the most pressing concern about small business size standards is to ensure that they are supportable by the current industry data and other relevant considerations, are consistent across industries, and effectively target Federal small business assistance to its intended beneficiaries.

One commenter stated that SBA's methodology of averaging size standards supported by different factors to calculate an overall size standard may result in loss of information. SBA disagrees. This procedure actually preserves information provided by different factors, as opposed to basing the size standard on only one or two factors. The commenter believed that the averaging procedure especially hurts companies in the $25.5 million to $35.5 million annual revenue range. However, as also noted by the commenter, if the size standard was based on the largest value supported by any of the factors, it would put smaller companies at a competitive disadvantage. The commenter believed that perhaps assigning different weights to different factors would provide better results, but it did not offer any specific suggestions.

An association representing professional services provided the

following comments on the various factors and analyses SBA used to develop the proposed size standards.

1. *Start-up costs and barriers to entry:* The association commented that while using average assets may be a useful method for assessing barriers to entry into the commercial market, it fails to capture the extensive administrative and compliance requirements associated with Federal contracts, the different skills required for Federal contracts as compared to the commercial market, and the size of contracts, all of which also act as significant barriers to the Federal market. The association recommended that SBA also evaluate the unique costs of entering the Federal marketplace.

SBA agrees that these are important factors determining businesses' ability to enter the Federal market and should be considered when evaluating size standards. However, there exists no readily available data in a form to be able to formalize these factors in the size standards methodology. Given the lack of data, SBA believes that evaluation of small business Federal market share relative to small business share of the industry total revenues would provide a fairly good indication of how successful small businesses are in participating in the Federal market. In addition, SBA also looks at the distribution of Federal contracts by firm size and size of contracts, when appropriate.

2. *Industry competition:* The association recommended that SBA use the ''eight-firm concentration ratio,'' which it claimed is also a widely accepted tool for measuring market share (although no references were provided to support this claim), for evaluating industry competition. The association stated that the eight-firm concentration ratio provides a more accurate picture of market share controlled by the largest firms in an industry. According to the association, using the eight-firm concentration ratio, SBA may find that the largest firms control more than 40 percent in more industries than using the four-firm concentration ratio and SBA may have to increase size standards for those industries.

SBA agrees that there are various measures for assessing industry competition. SBA has always used the four-firm concentration ratio to measure industry competition in its size standards analysis because this is the mostly widely used measure in the relevant literature, as described in its ''Size Standard Methodology'' white paper. Further, the special tabulation of the Economic Census that SBA receives from the U.S. Census Bureau only includes data to compute the four-firm concentration ratio, not the eight-firm ratio. However, SBA will consider using the eight-firm concentration ratio in future reviews. In response to the comment, SBA evaluated the eight-firm concentration ratio using the revenue data for firms receiving Federal contracts under NAICS Industry Group 5415 in CCR. The eight-firm concentration ratio was more than 40 percent only for NAICS 541513, as was the case for the four-firm concentration ratio based on the 2007 Economic Census.

3. *Federal contracting factor:* The association agreed with SBA's method of assigning higher size standards for industries where small businesses are underrepresented in the Federal market relative to their share in the industry's total sales. The association believed that SBA should also assess the extent to which contracts are being set aside within specific industries, as this might have an effect on small business Federal market share. It pointed out that a higher size standard may not necessarily lead to a higher small business Federal market share if small business set-asides are not used in a particular industry. The comment contended that SBA's goal should be to spread all small business contracting opportunities across a broad variety of industries and stated that raising size standards may not have a measurable impact on that goal if Federal agencies are over-relying on set-aside contracts only in a handful of industries to meet their small business contracting goals.

While SBA agrees that small business opportunities should be spread across a variety of industries, it does not believe that size standards are the only factor deciding how many set-asides Federal agencies want to use in the various industries. SBA's size standards establish eligibility for the small business set-aside opportunities that Federal agencies provide in a particular industry, but they do not dictate how the agencies make their set-aside decisions. The number of set-asides in each industry can be a function of many factors, including the nature, scope, types, volume, and costs of goods and services the agencies need to procure. It should also be noted that the current 23 percent small business contracting goal only applies to total procurements government-wide, but it does not apply to individual industries.

The association contended that the Federal contracting factor warrants a greater weight, although it did not provide any specific value, to account for factors affecting small business share in the Federal market, including administrative and compliance requirements associated with Federal contracts, different skills required for Federal contracts, and size of contracts. As mentioned earlier, there is a lack of data to be able to formalize these factors and assign a specific weight for the Federal contracting factor for specific industries. SBA already gives more weight to the Federal contracting factor in some industries than in others by assigning higher size standards for those industries that have $100 million or more in annual Federal contracting and a lower small business share in the Federal market relative to their share in industry's total sales.

Data Issues

SBA received 25 comments on the 2007 Economic Census and FPDS–NG data it used to evaluate industry and Federal procurement factors in developing the proposed rule.

Two associations representing the accounting profession contended that the Economic Census data that SBA uses in its analysis did not adequately reflect the accounting profession and recommended using alternative data sources for their industries. They provided SBA with data, but in most cases those data were either estimates based on sample surveys or represented only a segment of a particular industry, such as the largest firms in terms of revenue or Federal contracts.

SBA believes that the Economic Census data it uses are in fact comprehensive and adequately reflect the accounting profession because the data include all accounting firms in the industry, including any subsidiaries, divisions, and other affiliates that perform accounting functions. They are also more complete because Federal law requires all firms to respond to the Economic Census. Accordingly, SBA believes that the Economic Census data are more appropriate for its size standard analyses.

The data submitted by the associations reflect estimated revenues generated by their worldwide membership and by readers of a major accounting publication. SBA does not dispute the accuracy of their data. However, SBA uses only data that reflect domestic operations of entities with revenues and/or employees in the NAICS Industries for review of their size standards. Although the associations' data may appear to be more complete, SBA does not find that their data meet Agency requirements for determining what an appropriate size standard should be for an industry. In addition, one association stated that it represents more than 370,000 members worldwide,

but it is possible that not all members are firms. Its data included estimates of revenues and number of professionals per firm for 2007 and 2009, covering approximately 30,700 firms.

The Economic Census data that SBA uses are actual data on firms. SBA establishes small business size standards based on firms' sizes. Although the associations' data appear to be comprehensive, they are based on estimates. SBA does not believe their data are as accurate, comprehensive, and complete as the Economic Census. To be consistent with the past and with how SBA reviews size standards for all industries, SBA will continue to use Economic Census data in the absence of other more accurate data sources. However, the Agency will give due considerations to alternative data provided by the industries, especially if they are representative of the entire industry in question.

An association representing firms in the surveying, mapping, and geospatial market commented that the Economic Census data do not include the large firms that are active in the Federal geospatial market, which results in a downward bias in calculated standards. Since the Economic Census data that SBA receives from the Census Bureau are based on primary industry at the establishment level, establishments doing some geospatial work may not be included in that industry if that is not their primary work. SBA is aware that there are known problems with the Economic Census tabulation for some industries, and therefore it also evaluates CCR and FPDS–NG data for those industries.

A few commenters believed that the 2007 economic data are outdated and may not reflect current industry structure. SBA is attentive to this limitation, but the 2007 Economic Census is the latest and most comprehensive data source that is available for evaluating all industries consistently and on the same terms. An association representing architectural professionals contended that it has better data for the architectural industry than the Economic Census. The association's data on distribution of firms by size that it submitted with its comment were fairly comparable to a similar distribution based on the 2007 Economic Census special tabulation received from the U.S. Census Bureau. Several commenters cited a study from the Center for International and Strategic Studies on Federal professional services industrial base to substantiate their concerns regarding the participation of mid-sized businesses in the Federal market.

An association representing engineering firms raised a number of issues with the data from the 2007 Economic Census that SBA used to evaluate industry characteristics of Engineering Services (NAICS 541330). Specifically, it opined that Economic Census data do not accurately reflect the characteristics of businesses in the engineering industry for the reasons outlined below.

1. The association believed that the 2007 Economic Census includes several billion-dollar companies under NAICS 541330, thereby inflating SBA's calculated size standard for that industry. SBA disagrees with this comment. SBA received from the U.S. Census Bureau a special tabulation of the 2007 Economic Census for its size standards analysis. Only the total revenue of each establishment is included in the primary NAICS code for that establishment. Based on the evaluation of Federal contract data from FPDS–NG, NAICS 541330 does not appear be the primary industry for most of the companies that the association identified in its comment. That means that the vast majority of revenues they generate are not included in NAICS 541330. For example, in the case of one company, its primary industry is Aircraft Manufacturing (NAICS 336411), and hence its revenue will be included within that industry code. Had these companies' total revenues been included in NAICS 541330, the results would have supported a much larger size standard for Engineering Services. Even if these companies were primarily engaged in Engineering Services and included in the industry data, SBA believes that they should not be excluded. Excluding the largest firms from the analysis, as another association involved in surveying and mapping noted (discussed above), causes a downward bias on the calculated size standard.

2. The association also expressed concerns that the Economic Census data include firms that primarily provide engineering services to petroleum, petrochemical, and other industrial and manufacturing plants and processing industries, and therefore the data distort SBA's results. Based on the NAICS definition, SBA believes that all firms providing engineering services as their primary industry that are part of NAICS 541330 should be included in the analysis, no matter what their clients or industries receiving their services are.

3. The association commented that revenues that many engineering firms receive from non-Federal work, international work, and non-engineering work are also included in Economic Census data for NAICS 541330, distorting average firm size and estimated size standards. SBA disagrees with this comment for two reasons. First, revenues that U.S. companies generate in foreign countries are not included in the Economic Census. Second, including revenues that firms primarily engaged in Engineering Services generate from non-federal work or non-engineering type of work in NAICS 541330 is consistent with how SBA calculates revenues for its size standards purposes. In other words, for a company to qualify as small, its revenues from all sources (including Federal, state, and private work, and work related to non-primary industries) must be counted. *See* 13 CFR 121.104.

4. The association was also concerned that, compared to data from the Engineering News Record's (ENR) listing of the top 500 design firms, 2007 Economic Census data grossly overstated the number of firms with revenues over $25 million that provide infrastructure related engineering services. Specifically, the association stated that the 2007 Economic Census showed 771 firms with revenues over $25 million versus 383 firms based on ENR's listing of the top 500 design firms. SBA disagrees with these figures for two reasons. First, because Economic Census data for NAICS 541330 cover all types of engineering firms, not just a sample of design firms possibly developed through voluntary surveys, the figures from the two sources are simply not comparable. Second, the special tabulation of the 2007 Economic Census shows 1,242 firms above $25 million and 791 firms above $50 million in NAICS 541330. The association did not provide reference to the data source it used to verify its findings.

5. The association commented that the engineering industry is not homogenous and is composed of specialty (*i.e.,* single discipline) firms, full service (*i.e.,* multiple discipline) firms, and their variations. No industry is homogenous; otherwise size standards would be unnecessary. However, no matter how many disciplines, the Economic Census data for NAICS 541330 only include those establishments for which engineering services are the primary industry. All total revenues of an establishment are assigned to its primary NAICS industry.

The same engineering association also commented that the FPDS–NG data that SBA analyzed do not provide a complete picture of small business participation in the Federal marketplace. Specifically, it pointed out that there exist no data on work that large prime contractors subcontracted to

small businesses, especially in design-build contracts. In design-build contracts, a construction contractor is usually the prime contract holder and subcontracts all or some of the engineering to small firms. Similarly, the association noted that there are no data on work subcontracted to large firms by small firms. The association made a further comment that no data exist on various size of firms performing Federal work within small and large business categories. Citing these problems, the association stated that there is no way of knowing how successful and competitive small businesses are in the Federal market under current size standards. In addition, the association did not provide in its comment any alternative data sources that SBA should examine besides the FPDS–NG data to more accurately assess the Federal marketplace.

SBA is aware that the FPDS–NG data do not provide information on subcontracting and do not contain information on the exact sizes of businesses receiving Federal contracts. The Electronic Subcontracting Reporting System (eSRS) collects data on subcontracting activity, but those data are not categorized by NAICS industry. SBA concurs with the association's recommendation that the current data collection system should be improved to address these problems. However, despite these and other issues, SBA believes that FPDS–NG is still the best data source available for assessing activity in the Federal marketplace.

The association also commented that FPDS–NG data lack information on the exact sizes of businesses receiving Federal contracts, which would allow a better estimate of the impact of size standards changes on small businesses. SBA analyzed Federal contracts by both actual size of contract recipients and size of contracts by merging contract data from FPDS–NG with employees and revenues information from the CCR. By using this analysis in conjunction with the share of small businesses in the Federal market relative to their share in overall industry total sales, SBA assessed the impacts of proposed size standards changes on small business participation in the Federal market. If this SBA analysis is flawed, it is likely due to its being based on flawed data that companies have self-reported for their CCR registration profiles. SBA does not verify what information companies put in their CCR profiles, except when they apply for one of SBA's Business Development Programs or when the Agency must make a size determination after a small business size protest.

Small Business Size Definitions and Related Issues

SBA received approximately 160 public submissions from about 130 unique individuals (many submitted multiple comments or the same comment multiple times) asserting that SBA's proposed small business size standards did not represent or target ''truly small'' businesses. Many also stated that the proposed standards included up to 99 percent of all businesses, and even up to 100 percent in their states. Public submissions also included ordinary dictionary definitions and size standards used by foreign countries.

SBA acknowledges that some of its proposed size standards could include 97 percent to 99 percent of firms in a given industry. However, it is very important to point out that while it may appear to be a large segment of an industry in terms of the percentage of firms, small firms in industries analyzed in this rule represent only 37 percent of total industry receipts under current standards and 43 percent under the proposed size standards. Similarly, small businesses in those industries account for 22–23 percent of total industry Federal government contract awards. These factors are major considerations when evaluating small business size standards. It is not uncommon for a small number of large firms to have a high percentage of industry receipts and employees and to obtain the largest number of Federal contacts. In the March 16, 2011 proposed rule, SBA detailed its analysis and evaluation of these and other factors that it used to arrive at its various proposed small business size standards. SBA discusses elsewhere in this rule why it is not adopting every small business size standard as proposed.

SBA's small business size standards apply to business concerns on a national basis. As part of its review, SBA investigates whether one or more firms at or below a proposed size standard would be dominant in its industry. As stated in its regulations, when SBA examines dominance, it ''* * * take[s] * * * into consideration market share of a concern and other appropriate factors which may allow a concern to exercise a major controlling influence *on a national basis* in which a number of business concerns are engaged.'' 13 CFR 121.102(b) [emphasis added]. For Federal government procurement, opportunities for small business participation are not limited to contractors in any given area. SBA therefore looks at dominance on a national basis because U.S. Government contracting activities are located throughout the U.S., and contract performance can often be outside of the contracting activity's or the successful contractor's area. A contractor in Pennsylvania, for example, can bid on a contract in Hawaii, if it so chooses, and contracts awarded in California can be for work in New England. Therefore, SBA must evaluate dominance on a national basis, because place of bid, place of performance, and/or contractor location are virtually unlimited within the U.S.

Common dictionary definitions of ''small'' are very general and not relevant to why and how SBA establishes small business size standards. SBA's definition of a small business concern is more than a generic meaning of the word ''small'' in a dictionary. In addition, numeric small business size standards are just one component of what constitutes a small business concern. Size standards set thresholds an entity cannot exceed and still be small for various Federal government programs. If a firm (together with its affiliates) meets both SBA's definition of a business concern (*see* 13 CFR 121.105) and those numeric size thresholds, it is a small business concern; if it does not meet both SBA's definition of a business concern and those numeric thresholds, it is ''other than small.'' Common definitions of ''small'' usually speak about comparisons, and thus it is important to point out that such general definitions relate only to subjects as compared to others and lack specificity. SBA's small business size standards are comparisons, and small businesses are small when compared to those in its industry that are other than small, but SBA's definitions of what constitutes a small business concern for Federal government programs clearly delineate what is small. What constitutes a small business determines eligibility so that some businesses, but not all, can qualify for Federal government programs that provide benefits for small business concerns. A small business in one industry may not be ''small'' in another industry, because being small is relative to other business concerns that have similar ways of conducting their business.

Furthermore, just as SBA's small business size standards do not apply to programs of foreign entities, likewise another country's definition of what is small does not apply and has no relevance to U.S. Government programs.

All Other Issues

An association representing firms in NAICS 541360 (Geophysical Surveying and Mapping Services) expressed concern that Federal agencies often use NAICS 541930 (Commercial Photography) for contracts to perform mapping-related aerial photography. The association urged SBA to modify and clarify the distinction between aerial photography for mapping and commercial photography and to promulgate regulations to dissuade or prohibit the use of NAICS 541930 for aerial photography.

SBA does not establish, modify, or clarify NAICS industry definitions. Any comments regarding the NAICS industry definitions should be directed to the Office of Management and Budget, which in partnership with the U.S. Census Bureau, modifies and updates NAICS industry definitions. The Small Business Size Regulations (13 CFR 121) already contain provisions against the use of improper NAICS codes for Federal procurements. First, the regulations require Federal agencies to designate the proper NAICS code and size standard in a solicitation, selecting the NAICS code which best describes the principal purpose of the product or service being acquired. *See* 13 CFR 121.402(b). Second, the regulations provide that any interested party adversely affected by a NAICS code designation may appeal the designation to the Office of Hearings and Appeals. *See* 13 CFR 121.1102–1103.

To increase small business participation in Federal market for mapping and surveying, the association made several policy recommendations, specifically that (1) SBA establish small business contracting and subcontracting goals in each industry category to ensure that small businesses receive a fair proportion of Federal procurements of goods and services in each industry; (2) size and complexity of small business set-aside contracts match with size and capability of small business firms and the ''rule of 2'' be revised to allow the distinction among types and size of contracts; (3) SBA work with the industry to develop policies to account for teaming and pass through subcontracting when determining a firm meets the size standard; (4) SBA work with existing authority, such as OFPP, to reinstate the Small Business Competitiveness Demonstration Program; (5) SBA extend the $300,000 threshold for Department of Defense contracts for architecture and engineering services under 10 U.S.C. 2855(b) to civilian agencies as well; and, (6) the SBA work with the industry to modify FAR part 36–601–4(a)(4) to ensure that the Brooks Act also applies to Federal contracts involving surveying, mapping and geospatial services, pursuant to 40 U.S.C. 1102.

An association representing firms in the engineering industries also provided several policy recommendations to improve participation of small business engineering firms in the Federal market. These relate to improvement in contracting data collection, development of contracts commensurate with capabilities and experience of small firms, expansion of teaming arrangements, setting small business subcontracting goals for larger primes, and targeting more set-aside contracts to truly small firms.

SBA agrees that these are important issues relating to small business participation in the Federal market for engineering, surveying, mapping and geospatial services, but they are outside of the scope of this rule. SBA will work with the industry to find appropriate avenues to address these important issues.

An association commented that SBA failed to account for the number of additional firms that would become eligible for each industry category under the proposed rule. It is not that SBA did not estimate those figures by industry; rather, the Agency did not include all those details in the proposed rule. SBA believes that conducting an impact analysis on an industry-by-industry basis would make the rule too long and complicated. The association also suggested that SBA provide estimates of additional firms that would become eligible in each industry if SBA proposed a size standard one level higher than the current proposed size standard. SBA believes that such information would make the rule much more complex. In addition, SBA finds it useful to receive public comments on its proposal supported by its analysis and other relevant considerations, rather than comments on different hypothetical scenarios. However, if SBA adopts in the final rule a different size standard from that in the proposed rule, SBA will provide the new estimate of firms impacted in its final regulatory flexibility analysis.

All public submissions to the proposed rule are available for public review at *http://www.regulations.gov*.

Conclusion

Based on the reevaluations of relevant industry and program data and the Agency's assessments of public comments it received on the proposed rule, SBA has decided to increase small business size standards for 34 industries and three sub-industries in NAICS Sector 54 and one industry in NAICS Sector 81. SBA has decided to maintain 11 receipts based size standards in NAICS Sector 54 at their current levels. SBA also is removing Map Drafting (along with its $4.5 million size standard) as the ''exception'' under NAICS 541340, Drafting Services. The following Table—Summary of Size Standards Changes—summarizes SBA's decisions.

SUMMARY OF SIZE STANDARDS CHANGES

NAICS Codes	NAICS industry title	Current size standard ($ millions)	Proposed size standard ($ millions)	Revised size standard ($ millions)
541110	Offices of Lawyers	$7.0	$10.0	$10.0
541191	Title Abstract and Settlement Offices	7.0	10.0	10.0
541199	All Other Legal Services	7.0	10.0	10.0
541211	Offices of Certified Public Accountants	8.5	14.0	19.0
541213	Tax Preparation Services	7.0	14.0	19.0
541214	Payroll Services	8.5	14.0	19.0
541219	Other Accounting Services	8.5	14.0	19.0
541310	Architectural Services	4.5	19.0	7.0
541320	Landscape Architectural Services	7.0	19.0	7.0
541330	Engineering Services	4.5	19.0	14.0
Except	Military and Aerospace Equipment and Military Weapons	27.0	27.0	35.0
Except	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	27.0	27.0	35.5

SUMMARY OF SIZE STANDARDS CHANGES—Continued

NAICS Codes	NAICS industry title	Current size standard ($ millions)	Proposed size standard ($ millions)	Revised size standard ($ millions)
Except,	Marine Engineering and Naval Architecture	18.5	25.5	35.5
541340	Drafting Services	7.0	19.0	7.0
Except,	Map Drafting	4.5	[1]	[1]
541350	Building Inspection Services	7.0	19.0	7.0
541360	Geophysical Surveying and Mapping Services	4.5	19.0	14.0
541370	Surveying and Mapping (except Geophysical) Services	4.5	19.0	14.0
541380	Testing Laboratories	12.0	19.0	14.0
541410	Interior Design Services	7.0	7.0	7.0
541420	Industrial Design Services	7.0	7.0	7.0
541430	Graphic Design Services	7.0	7.0	7.0
541490	Other Specialized Design Services	7.0	7.0	7.0
541511	Custom Computer Programming Services	25.0	25.5	25.5
541512	Computer Systems Design Services	25.0	25.5	25.5
541513	Computer Facilities Management Services	25.0	25.5	25.5
541519	Other Computer Related Services	25.0	25.5	25.5
541611	Administrative Management and General Management Consulting Services.	7.0	14.0	14.0
541612	Human Resources Consulting Services	7.0	14.0	14.0
541613	Marketing Consulting Services	7.0	14.0	14.0
541614	Process, Physical Distribution and Logistics Consulting Services.	7.0	14.0	14.0
541618	Other Management Consulting Services	7.0	14.0	14.0
541620	Environmental Consulting Services	7.0	14.0	14.0
541690	Other Scientific and Technical Consulting Services	7.0	14.0	14.0
541720	Research and Development in the Social Sciences and Humanities.	7.0	19.0	19.0
541810	Advertising Agencies	7.0	14.0	14.0
541820	Public Relations Agencies	7.0	14.0	14.0
541830	Media Buying Agencies	7.0	14.0	14.0
541840	Media Representatives	7.0	14.0	14.0
541850	Display Advertising	7.0	14.0	14.0
541860	Direct Mail Advertising	7.0	14.0	14.0
541870	Advertising Material Distribution Services	7.0	14.0	14.0
541890	Other Services Related to Advertising	7.0	14.0	14.0
541910	Marketing Research and Public Opinion Polling	7.0	7.0	14.0
541921	Photography Studios, Portrait	7.0	7.0	7.0
541922	Commercial Photography	7.0	7.0	7.0
541930	Translation and Interpretation Services	7.0	7.0	7.0
541940	Veterinary Services	7.0	7.0	7.0
541990	All Other Professional, Scientific and Technical Services	7.0	7.0	14.0
811212	Computer and Office Repair and Maintenance	25.0	25.5	25.5

[1] Eliminate.

Compliance With Executive Orders 12866, 13563, 12988, 13132, and 13272 the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act (5 U.S.C. 800).

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that the revised changes to small business size standards for 34 industries and three sub-industries within NAICS Sector 54, Professional, Technical, and Scientific Services, and one industry in NAICS Sector 81, Other Services, reflect changes in economic characteristics of small businesses in those industries and the Federal procurement market. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions to determine which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegated to SBA's Administrator the responsibility for establishing definitions for small business. The Act also requires that small business definitions vary to reflect industry differences. In addition, the Jobs Act requires the Administrator to review one-third of all size standards during each 18-month period from the date of its enactment and to review all size standards at least every five years thereafter. The supplementary information sections of the March 16, 2011 proposed rule and this final rule explained in detail SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is gaining or regaining eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities

intended for small businesses. Federal small business programs provide targeted opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a) program, and programs benefitting small disadvantaged businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Other Federal agencies also may use SBA's size standards for a variety of regulatory and program purposes. These programs help small businesses become more knowledgeable, stable, and competitive.

In the 35 industries and three sub-industries for which SBA has decided to increase size standards in this rule, SBA estimates that, based on an updated special tabulation of the 2007 Economic Census, about 8,350 additional firms will obtain small business status and become eligible for these programs. That number is about 1.1 percent of the total number of firms in those industries defined as small under the current standards. SBA estimates that this will increase the small business share of total industry receipts in those industries from about 37 percent under the current size standards to 42 percent.

The benefits of increasing size standards to a more appropriate level will accrue to three groups as follows: (1) Some businesses that are above the current size standards will gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have larger pools of small businesses from which to draw for their small business procurement programs.

Based on the FPDS–NG data for fiscal years 2008–2010, more than 95 percent of total Federal contracting dollars spent in industries covered by this rule were accounted for by the 35 industries and three sub-industries for which SBA is increasing the size standards. SBA estimates that additional firms gaining small business status in those industries under the revised size standards could potentially obtain Federal contracts totaling up to $500 million per year under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVO SBC programs and other unrestricted procurements. The added competition for many of these procurements also could result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) Business Loan and 504 Programs, based on the 2008–2010 data, SBA estimates about 75 to 100 additional loans totaling about $15 million to $20 million in Federal loan guarantees could be made to these newly defined small businesses under the revised size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate exactly their number and the total amount loaned. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard for business concerns that do not meet the size standards for their industry ($15 million in tangible net worth and $5 million in net income after income taxes). Therefore, SBA finds it similarly difficult to quantify the impact of these proposed standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of benefits for future disasters.

To the extent that 8,350 newly defined small firms under the revised size standards could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities, additional firms seeking SBA guaranteed lending programs, additional firms eligible for enrollment in the Central Contractor Registration's Dynamic Small Business Search database, and additional firms seeking certification as 8(a) or HUBZone firms or those qualifying for small business, WOSB, SDVO SBC, or SDB status. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts under the higher revised size standards. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. The additional costs associated with fewer bidders, however, are expected to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since these firms may be eligible for an evaluation adjustment for contracts when they compete on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the revised size standards. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision.

The revisions to the existing size standards are consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit,

Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and the benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, is included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA met with various industry groups to obtain their feedback on its methodology and other size standards issues. SBA also presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tours. These presentations included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Before SBA issued the March 16, 2011 proposed rule, it met with representatives from two associations representing firms in NAICS Industry Group 5412, Accounting, Tax Preparation, Bookkeeping, and Payroll Services, to learn their ideas for size standards for these industries, without discussing what changes SBA was considering to propose. SBA explained its methodology and indicated it would consider other data or information they might have to support the size standard that they suggested.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and nonprocurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing the proposed rule.

Furthermore, when SBA issued the proposed rule, it provided notice of its publication to over 230 individuals and companies that had in recent years exhibited an interest by letter, email, or phone, in size standards for NAICS Sector 54 so they could comment.

The review of size standards in NAICS Sector 54, and the implementation of necessary adjustments to reflect current industry data and market conditions, are consistent with EO 13563 section 6, calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards had been limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and to do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed 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. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13272

Pursuant to Executive Order 13272 and the Small Business Jobs Act of 2010, Federal agencies issuing final rules are required to discuss and give every appropriate consideration to comments received from the SBA's Office of Advocacy to the proposed rule. SBA's Office of Advocacy submitted two comments on the proposed rule. In the first comment submitted on May 12, 2012, it expressed a concern about the large proposed increase to the size standard for the A&E services industries that would define as small much larger firms than those considered small under the current size standard. It also recommended that SBA extend the comment period an additional 45 days to allow stakeholders to further evaluate and comment on the proposed size standards. SBA partially agreed with this recommendation by extending the comment period for an additional 30 days. As a result, SBA received approximately 1,000 additional comments after the closing date of original comment period.

The second comment submitted by SBA's Office of Advocacy on June 14, 2011 addressed the size standard concerns on behalf of three industries. For the A&E services, it acknowledged that stakeholders had expressed differing concerns regarding the proposed $19 million size standard. It recommended that SBA consider a lower size standard than proposed, but increase the current $4.5 million size standard to allow for some growth of firms in the Federal marketplace. As discussed earlier in this final rule, SBA decided not to adopt the proposed $19 million size standard for the A&E services. Rather, based largely upon the comments and SBA's further analysis of industry data, SBA adopted a $7 million size standard for architectural services and a $14 million size standard for engineering services.

For the mapping services and accounting industries, SBA's Office of Advocacy recommended no specific size standard other than suggesting that SBA should give careful consideration to the comments submitted by associations in these industries. In particular, it stressed that SBA should examine the geospatial market within the surveying and mapping industry and reassess its methodology for evaluating the primary and secondary factors for the accounting industry.

SBA agreed with these recommendations. As discussed earlier in this final rule, SBA found that the information provided in the comments on these two industries warranted a reassessment of the size standards. Based on industry comments and data as well as SBA's additional analysis, SBA adopted a higher 19 million size

standard rather than the proposed $14 million for the accounting industry. SBA's decision not to adopt a common size standard for all industries in NAICS Industry Group 5413, assessment of public comments, and reevaluation of industry and Federal procurement data, as previously discussed, resulted in a $14 million size standard for both NAICS 541360 (Geophysical Surveying and Mapping Services) and NAICS 541370 (Surveying and Mapping, except Geophysical), which includes geospatial services. Without that assessment, the data for NAICS 541370 alone would have supported only a $5 million size standard.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

For the purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule will not impose new reporting or record keeping requirements, other than those required of SBA.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities in industries covered in this rule. As described above, this rule may affect small entities seeking Federal contracts, SBA 7(a) and 504 Guaranteed Loans, SBA Economic Injury Disaster Loans, and various small business benefits under other Federal programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small entities to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What are the need for and objective of the rule?

Many of SBA's size standards for the Professional, Technical, and Scientific Services industries had not been reviewed since the 1980s. Since then, technological changes, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries in that Sector. Such changes can be sufficient to support a revision to size standards for some industries. Based on the analysis of the latest industry and program data available, SBA believes that the revised standards in this rule more appropriately reflect the size of businesses in those industries that need Federal assistance. Additionally, the Jobs Act requires SBA to review all size standards and make appropriate adjustments to reflect current data and market conditions.

(2) What are SBA's description and estimate of the number of small entities to which the rule will apply?

Based on the updated tabulation from the 2007 Economic Census, SBA estimates that about 8,350 additional firms will become small because of increases in size standards in 35 industries and three sub-industries. That represents 1.1 percent of total firms in those industries and sub-industries. This will result in an increase in the small business share of total industry receipts for those industries and sub-industries from about 37 percent under the current size standard to 42 percent under the revised size standards. SBA does not anticipate the revised size standards to cause a significant competitive impact on smaller businesses in these industries. As many comments to the proposed rule suggested, the revised size standards will enable more small businesses to retain their small business status for a longer period. Under current standards, many small businesses have lost their eligibility and find it difficult to compete with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

(3) What are the projected reporting, record keeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

Revised size standards do not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the CCR database and certify at least once annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA programs that assist small businesses but does not impose a regulatory burden, as they neither regulate nor control business behavior.

(4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing or revising size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator. 13 CFR 121.903. The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition after consultation with the Office of Advocacy of the U.S. Small Business Administration. 5 U.S.C. 601(3).

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. In § 121.201, amend the table ''Small Business Size Standards by NAICS Industry'' as follows:

■ a. In § 121.201, in the table, revise the entries for ''541110'', ''541191'', ''541199'', ''541211'', ''541213'', ''541214'', ''541219'', ''541310'', ''541330 introductory entry and first, second and third sub-entry'', ''541360'', ''541370'', ''541380'', ''541511'', ''541512'', ''541513'', ''541519 introductory entry'', ''541611'', ''541612'', ''541613'', ''541614'', ''541618'', ''541620'', ''541690'', ''541720'', ''541810'', ''541820'', ''541830'', ''541840'', ''541850'', ''541860'', ''541870'', ''541890'', ''541910'', ''541990'', and ''811212'' ; and

■ b. In § 121.201, in the table, amend the entry for ''541340'' by removing the subentry ''Except'', ''Map Drafting'' ''$4.5''.

The revisions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* *	* * *	*	*
541110	Offices of Lawyers	$10.0	
541191	Title Abstract and Settlement Offices	10.0	
541199	All Other Legal Services	10.0	
541211	Offices of Certified Public Accountants	19.0	
541213	Tax Preparation Services	19.0	
541214	Payroll Services	19.0	
541219	Other Accounting Services	19.0	
541310	Architectural Services	7.0	
* *	* * *	*	*
541330	Engineering Services	14.0	
Except,	Military and Aerospace Equipment and Military Weapons	35.5	
Except,	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992.	35.5	
Except,	Marine Engineering and Naval Architecture	35.5	
* *	* * *	*	*
541360	Geophysical Surveying and Mapping Services	14.0	
541370	Surveying and Mapping (except Geophysical) Services	14.0	
541380	Testing Laboratories	14.0	
* *	* * *	*	*
541511	Custom Computer Programming Services	25.5	
541512	Computer Systems Design Services	25.5	
541513	Computer Facilities Management Services	25.5	
541519	Other Computer Related Services	25.5	
* *	* * *	*	*
541611	Administrative Management and General Management Consulting Services.	14.0	
541612	Human Resources Consulting Services	14.0	
541613	Marketing Consulting Services	14.0	
541614	Process, Physical Distribution and Logistics Consulting Services	14.0	
541618	Other Management Consulting Services	14.0	
541620	Environmental Consulting Services	14.0	
541690	Other Scientific and Technical Consulting Services	14.0	
* *	* * *	*	*
541720	Research and Development in the Social Sciences and Humanities	19.0	
541810	Advertising Agencies [10]	[10] 14.0	
541820	Public Relations Agencies	14.0	
541830	Media Buying Agencies	14.0	
541840	Media Representatives	14.0	
541850	Display Advertising	14.0	
541860	Direct Mail Advertising	14.0	
541870	Advertising Material Distribution Services	14.0	
541890	Other Services Related to Advertising	14.0	
541910	Marketing Research and Public Opinion Polling	14.0	
* *	* * *	*	*
541990	All Other Professional, Scientific and Technical Services	14.0	
* *	* * *	*	*
811212	Computer and Office Repair and Maintenance	25.5	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * *	* * *	*	*

* * * * *

[10] *NAICS codes 488510 (part) 531210, 541810, 561510, 561520,* and *561920*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

* * * * *

Dated: November 7, 2011.

Karen G. Mills,

Administrator.

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Federal Register

Vol. 77, No. 28

Friday, February 10, 2012

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4885–5154 1
5155–5372 2
5373–5680 3
5681–5986 6
5987–6462 7
6463–6662 8
6663–6940 9
6941–7516 10

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8775 5373
8776 5375
8777 5377

Executive Orders:
13598 5371
13599 6659

Administrative Orders:
Memorandums:
Memorandum of January 18, 2012 5679
Notices:
Notice of February 3, 2012 5985

5 CFR

2471 5987
2472 5987

Proposed Rules:
213 6022
1600 6504
1601 6504
1604 6504
1605 6504
1650 6504
1651 6504
1653 6504
1655 6504
1690 6504

7 CFR

27 5379
301 5381
985 5385
1491 6941
4290 4885

Proposed Rules:
205 .....5415, 5717

8 CFR

103 5681
235 5681

10 CFR

780 4885
781 4887

Proposed Rules:
431 7282

12 CFR

741 5155
1005 6194

Proposed Rules:
703 5416
741 4927
1005 6310

13 CFR

121 7490

Proposed Rules:
115 5721
300 6517
301 6517
302 6517
303 6517
304 6517
305 6517
306 6517
307 6517
308 6517
310 6517
311 6517
314 6517

14 CFR

25 .....5990, 6945
27 4890
29 4890
39 .....5167, 5386, 5991, 5994, 5996, 5998, 6000, 6003, 6663, 6666, 6668, 6669, 6671
71 .....5168, 5169, 5170, 5691, 6463
97 .....5693, 5694
1215 6949

Proposed Rules:
Ch. 1 6694
39 .....5195, 5418, 5420, 5423, 5425, 5427, 5724, 5726, 5728, 5730, 6023, 6518, 6520, 6522, 6525, 6685, 6688, 6692, 7005, 7007
71 .....5429, 5733, 6026
135 7010

15 CFR

744 5387
902 5389

Proposed Rules:
336 5440

16 CFR

Proposed Rules:
1223 7011

17 CFR

22 6336
190 6336

18 CFR

1 4891
2 4891
3 4891
4 4891
5 4891
11 4891
12 4891
131 4891
157 4891
284 4891
376 4891
380 4891
385 4891

19 CFR

Proposed Rules:
4 6704
122 6704
162 6527
357 5440

20 CFR

Proposed Rules:
404 5734

21 CFR

1 5175
7 5175
16 5175
201 5696
312 5696
314 5696
510 ....4895, 5700
520 ....4895, 5700
522 4895
524 4895
529 4895
558 4895
601 5696
606 6463
610 ....5696, 6463
640 6463
801 5696
807 5696
809 5696
812 5696
814 5696

Proposed Rules:
173 5201

22 CFR

22 5177
51 5177

24 CFR

5 5662
200 5662
203 5662
236 5662
400 5662
570 5662
574 5662
882 5662
891 5662
954 6673
982 5662

25 CFR

514 5178
523 5183

26 CFR

1 ....5700, 6005

Proposed Rules:
1 ....5442, 5443, 5454, 6027
48 6028

27 CFR

Proposed Rules:
19 6038
447 5735
478 5460
479 5735

29 CFR

1602 5396
2550 5632
4007 6675

30 CFR

Proposed Rules:
942 5740

31 CFR

543 6463
546 6463
547 6463

33 CFR

100 ....6007, 6954
110 6010
117 ....5184, 5185, 5186, 5398, 6007, 6012, 6013, 6465, 6962, 6963
147 6007
165 ....4897, 4900, 5398, 6007, 6013, 6954

Proposed Rules:
100 ....5463, 6039, 6708
110 5743
117 ....5201, 6042
165 ....5463, 5747, 7025

36 CFR

Proposed Rules:
242 5204
1195 6916

37 CFR

Proposed Rules:
42 ....6868, 6879, 7028, 7040, 7060, 7080, 7094
90 6879

38 CFR

4 6466
17 5186

39 CFR

230 6676
3001 6676
3025 6676

Proposed Rules:
111 5470

40 CFR

52 ....5191, 5400, 5700, 5703, 5706, 5709, 5710, 6016, 6467, 6963
62 6681
81 4901
97 5710
174 6471
180 4903
721 6476

Proposed Rules:
52 ....4937, 4940, 5207, 5210, 6044, 6529, 6711, 6727, 6743
63 6628
81 ....4940, 6727, 6743
141 5471
142 5471
721 4947

41 CFR

Proposed Rules:
60-741 7108

42 CFR

71 6971
81 5711
412 4908
413 4908
476 4908

Proposed Rules:
71 7108
447 5318
489 5213

44 CFR

67 ....6976, 6980

45 CFR

670 5403
1611 4909

46 CFR

251 5193
252 5193
276 5193
280 5193
281 5193
282 5193
283 5193

Proposed Rules:
327 5217

47 CFR

1 6479
2 ....4910, 5406
15 4910
18 4910
73 6481
76 6479
97 5406

Proposed Rules:
64 4948

48 CFR

422 5714
532 6985
552 6985

Proposed Rules:
422 5750

49 CFR

242 6482
575 4914

Proposed Rules:
191 5472
192 5472
195 5472
214 6412
232 6412
243 6412
611 5750
821 6760
826 6760

50 CFR

29 5714
216 ....4917, 6682
218 4917
223 5880
224 ....5880, 5914
622 ....5413, 6988
648 ....5414, 7000
665 6019
679 ....5389, 6492, 6683
680 6492

Proposed Rules:
17 4973
100 5204
218 6771
300 5473
600 5751

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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H.R. 3800/P.L. 112–91
Airport and Airway Extension Act of 2012 (Jan. 31, 2012)
H.R. 3237/P.L. 112–92
SOAR Technical Corrections Act (Feb. 1, 2012)
Last List January 9, 2012

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